SCANNED

MT LEGISLATIVE HISTORY

Chapter 229 19 91

Bill H 258 S _____ Original bill & hist. ✓ C

H. Committee on Business & Economic Development S. Committee on Business & Industry

Hearing Date(s)	Feb 14	✓ C	Hearing Date(s)	Mar 05	✓ C
	Feb 15	✓ C			C
		C			C
		C			C
Date Out	Feb 15	✓ C		Mar 09	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HB 258 INTRODUCED BY BACHINI, ET AL.

REQUIRE AUTO WARRANTY WORK TO BE PAID SAME AS RETAIL WORK—ADMINISTRATION PENALTIES

1/18	INTRODUCED		
1/18	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/18	FIRST READING		
1/23	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/14	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	95	0
2/21	REVISED FISCAL NOTE REQUESTED		
2/23	3RD READING PASSED	98	0
2/23	REVISED FISCAL NOTE PRINTED		
2/23	REVISED FISCAL NOTE RECEIVED		
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO BUSINESS & INDUSTRY		
3/05	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	49	0
3/12	TAKEN FROM 3RD READING AND PLACED ON 2ND READING		
3/13	2ND READING CONCURRED AS AMENDED	49	0
3/14	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	89	0
3/18	3RD READING AMENDMENTS CONCURRED	97	1
3/23	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 229	EFFECTIVE DATE: 10/01/91	

HB 259 INTRODUCED BY COCCHIARELLA, ET AL.

REINSTATE STEPS, PROVIDE SALARY ADJUSTMENTS FOR STATE EMPLOYEES—PLAN 60

1/18	INTRODUCED
1/18	REFERRED TO STATE ADMINISTRATION
1/18	FISCAL NOTE REQUESTED
1/18	FIRST READING
1/24	FISCAL NOTE RECEIVED
1/26	FISCAL NOTE PRINTED
2/01	HEARING
	DIED IN COMMITTEE

HB 260 INTRODUCED BY BARNHART, ET AL.

REQUIRE INSURANCE TO COVER ADOPTED CHILD SAME AS NATURAL CHILDREN OF INSURED

1/18	INTRODUCED		
1/18	REFERRED TO HUMAN SERVICES & AGING		
1/19	FIRST READING		
1/30	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED AS AMENDED	90	8
2/26	3RD READING PASSED	84	15
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO BUSINESS & INDUSTRY		
3/19	HEARING		
3/19	COMMITTEE REPORT—BILL CONCURRED		

HOUSE BILL NO. 258

INTRODUCED BY BACHINI, NATHE, STANG, WALLIN, LYNCH, DRISCOLL, HALLIGAN, J. BROWN, THAYER, KASTEN

IN THE HOUSE

JANUARY 18, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
FEBRUARY 16, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1991	PRINTING REPORT.
FEBRUARY 19, 1991	SECOND READING, DO PASS.
FEBRUARY 20, 1991	ENGROSSING REPORT.
FEBRUARY 23, 1991	THIRD READING, PASSED. AYES, 98; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 25, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 7, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 11, 1991	SECOND READING, CONCURRED IN.
MARCH 12, 1991	ON MOTION, TAKEN FROM THIRD READING AND PLACED ON SECOND READING THE NEXT LEGISLATIVE DAY.
MARCH 13, 1991	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 14, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 16, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 18, 1991	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

House BILL NO. 258

INTRODUCED BY Bachiu NATHE Stang Haskin Lynch Smith Dallyn J. Brown Thomas Kantor

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT COMPENSATION PAID BY MOTOR VEHICLE MANUFACTURERS TO MOTOR VEHICLE DEALERS FOR PARTS AND SERVICES PERFORMED UNDER WARRANTY MUST BE AT THE SAME RATE CHARGED BY THE DEALER FOR RETAIL WORK; PROVIDING ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 61-4-204 AND 61-4-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-204, MCA, is amended to read:

"61-4-204. **Filing agreement -- product liability.** (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor.

INTRODUCED BILL
HB 258

vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not affect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. The manufacturer must compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the ~~dealer's regular established retail~~ same rate the dealer charges to its retail customers for ~~similar~~ nonwarranty work of a like kind, based upon retail flat rate labor time guides contained in the most recent volumes of Motors, Mitchell, or Chilton manuals.

(5) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 2. Section 61-4-210, MCA, is amended to read:

"61-4-210. Penalties -- administrative penalties. (1) Except as provided in subsection (2), a person who violates

any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the pecuniary loss, together with costs including reasonable attorney's fees.

(4) In addition to any other penalty provided for in this part, the department may take appropriate enforcement action on its own initiative in accordance with the contested case procedures of Title 2, chapter 4. A person who violates the provisions of this part may be subject to administrative action and a civil penalty not to exceed $500

1 for each violation."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0258, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
The proposed legislation would require that compensation paid by motor vehicle manufacturers to motor vehicle dealers for parts and services performed under warranty must be at the same rate charged by the dealer for retail work. The bill also provides for additional administrative action and civil penalty for each violation.

ASSUMPTIONS:
1. The fiscal impact is based upon the assumption that the Attorney General would have a significant role in cases against motor vehicle manufacturers under this bill. However, if motor vehicle dealers rely primarily on private attorneys rather than the Attorney General, there may be minimal impact on the Department of Justice caseload.
2. Current law is represented by the executive budget recommendation for the Legal Services Division of the Department of Justice.
3. The 2.50 FTE increase as a result of this bill include a 0.50 FTE attorney (Grade 19, Step 2), 1.00 investigator (Grade 16, Step 2), and 1.00 FTE clerical (Grade 9, Step 2). Employee benefits are calculated at a rate of 21%.

FISCAL IMPACT:

Department of Justice-Legal Services Division

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	25.50	28.00	2.50	25.50	28.00	2.50
Personal Services	990,601	1,066,801	76,200	989,277	1,069,477	80,200
Operating Costs	242,328	261,028	18,700	237,743	256,443	18,700
Equipment	12,975	20,475	7,500	12,704	12,704	0
Total	1,245,904	1,348,304	102,400	1,239,724	1,338,624	98,900
Funding:						
General Fund (01)	1,245,904	1,348,304	102,400	1,239,724	1,338,624	98,900
General Fund Impact			(102,400)			(98,900)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
None.

Rod Sundsted 1-26-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Bob Bachini
BOB BACHINI, PRIMARY SPONSOR DATE

Fiscal Note for HB0258, as introduced HB 258

CHAIRMAN--BOB BACHINI
SECRETARY-JO LAHTI
NORMAL SCHEDULE==> SITE: ROOM 312-3 DAYS: M,T,W,T,F TIME: 8:00 A.M.

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0252	1/18				JUDICIARY	
FORRESTER, GARY			ALLOW 45 DAYS TO GIVE NOTICE OF RIGHT TO CLAIM CONSTRUCTION LIEN			
HB0258	1/18	2/14		PASS AS AMENDED		2/16
BACHINI, BOB			REQUIRE AUTO WARRANTY WORK TO BE PAID SAME AS RETAIL WORK -- ADMIN PENALTIES			
HB0261	1/18	2/15		PASS AS AMENDED		2/16
KILPATRICK, TOM			PROHIBIT PRICE DISCRIMINATION FOR COMMODITIES OF LIKE GRADE AND QUALITY			
HB0279	1/19	1/29		DO PASS		1/30
SCHYE, TED			PROHIBIT USE OF AUTO TELEPHONE SYS., DEVICES, OR FACSIMILE FOR SPECIFIC USE			
HB0297	1/21	1/30		PASS AS AMENDED		1/30
SPRING, JR., WILBUR			REVISE LAWS ON SURPLUS LINES INSURANCE			
HB0308	1/21	2/12				
MENAHAN, RED			AUTHORIZE PUNCHBOARD & PULLTAB GAMBLING			
HB0329	1/22	2/11		TABLED ON 02/11		
DOLEZAL, ED			QUALIFICATIONS FOR LICENSING AS MANICURIST			
HB0331	1/22	1/31		PASS AS AMENDED		2/02
KILPATRICK, TOM			DEPT OF JUSTICE RESTRICT DISCLOSURE OF INFO RELATING TO VEHICLE OWNER			
HB0348	1/22	1/31		DO PASS		2/02
GERVAIS, FLOYD			SIGNS FOR IMITATION INDIAN ARTS OR CRAFT ARTICLES			
HB0350	1/24	2/01		TABLED ON 02/18		
PAVLOVICH, BOB			PROHIBIT HEALTH CARE PROVIDERS FROM REFUSING TO ACCEPT MEDICARE ASSIGNMENTS			
HB0362	1/22	1/31		TABLED ON 02/01		
HANSON, MARIAN			ALLOWING INVESTMENT OF PUBLIC FUNDS IN FACE AMOUNT CERTIFICATES			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By **REP. BOB BACHINI, CHAIRMAN,** on February 14, 1991, at 7:15 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Executive action was to be taken on HB 438, HB 499, and HB 552. The Committee would hear HB 541, HB 590, and HB 258.

EXECUTIVE ACTION ON HOUSE BILL 438

Motion/Vote: **REP. STEVE BENEDICT moved HB 438 Do Not Pass. He then moved the proposed amendments #043801 be adopted. REP. STELLA JEAN HANSEN made a substitute motion that HB 438 Do Pass. REP. PAVLOVICH made a substitute motion to Table HB 438.**

Motion to Table HB 438 carried with REP. STELLA JEAN HANSEN VOTING NO. All other members except REP. WALLIN who was absent at the moment voted AYE.

HEARING ON HOUSE BILL 258

Presentation and Opening Statement by Sponsor:

REP. BOB BACHINI, HD 14, Havre, sponsor, explained this is an act requiring compensation paid by motor vehicle manufacturers to motor vehicle dealers for parts and services performed under warranty must be at the same rate charged by the dealer for retail work; providing administrative penalties; and amending two sections, MCA. He had three amendments for the bill. One of which has been worked out by both the proponents and opponents, and another that takes care of Navistar Company's concern, and the RV dealers concern with the bill, which he will present to the Committee when executive action is taken.

Proponents' Testimony:

REP. TIM WHALEN supports HB 258. There was a bad faith lawsuit brought against the American Motors Dealership in Billings several years ago. There was a problem vehicle that came off the line. He was convinced one of the reasons the American Motors Corporation that he represented on and off was sued was the fact that they had such a limited policy of reimbursing dealers on warranty work as the necessary work needed to be performed on that vehicle never got done. After this individual had taken the vehicle in about a half a dozen times, had the same thing fixed, and had all these factory representatives who weren't even qualified to decide what was wrong with that automobile look at it, it sat there for about six months and this man didn't have the use of this vehicle. He finally decided to revoke acceptance of that vehicle and brought the bad faith lawsuit that he did. During the course of discovery in that lawsuit, it became obvious that a more realistic reimbursement rate than set forth in the Chilton's manual and the other manual that is available, a lot more attention should be given to performing warranty work than is currently given.

Warranty work is required to be performed under the warranty manual that is put out by a particular manufacturer. Regular paid work is always paid for or usually paid these shops under one of these other manuals. So repair men, as do the auto dealers, have a strong incentive to do the work that pays the greatest amount and sometimes the warranty work is set aside. The manufacturers might oppose this bill. If they look at their own business, they will find that if dealers do not have an incentive, other than the boilerplate that is put in all the franchise agreements, to perform this warranty work, from a financial point of view it is going to cost the manufacturers a lot of money down the road. He has never been an advocate of being pennywise and pound foolish. In the final analysis this is a good bill, not just for the auto dealers in this state, but also for consumers.

Mike Grimes, Auto Dealer in Helena, Chairman of the Montana Auto Dealers Association, on behalf of the Montana Auto Dealers in

general, supports this bill for three primary reasons: The dealers find they have to subsidize the manufacturers' warranties; they are forced to ask their technicians and service and parts employees to subsidize the factories' warranties; there is a constant upward push on retail rates which are ultimately paid by the consumer. **EXHIBIT 9.**

Tom Harrison, representing the Montana Auto Dealers Association, who is an attorney for them on a regular basis, explained legal problems with HB 258. To read the bill as a lay person, it presently says the payment will be at the dealer's regular established retail rate. That is pretty clear, but the manufacturers say No, they don't know what the retail rate really means. It doesn't mean the rate an auto dealer is charging, it means the rate that the manufacturers have set back in Detroit. The factory sends them a manual that says what the retail rate is to be. The bill is to clarify what the retail rate is. The legislative intent was and is and ought to be that the retail rate means the rate that the consumer on the street is being charged. That is the retail rate. It is not the rate that is mailed from Detroit.

The circumstances dealers find themselves in, and this is not just automobile dealers, it is implement dealers and many others who are operating under a franchise agreement, is referred to in the law business as 'contract of adhesion'; that means the one flows from the other. The people that are dealing with the contractor relationships are in unequal bargaining positions, but when the contract comes from the manufacturer and you have the franchise for whatever brand it is, what choice do you have? They say that is a negotiated contract. Is it? They tell you 30% of this or $600 for that - that is not a negotiated contract, that is a contract of adhesion and you have very little to no opportunity to oppose it, to modify or negotiate it; you have but to accept it in order to retain some type of relationship with the superior power and position. Because of that this is not a matter that has been able to be 'negotiated' even though it might have been yesterday with six representatives of these people. There are people looking at this from Detroit to Houston. The negotiations are that there is no negotiation, so we are dealing in an area of contract adhesion. The clear intent of the bill as it exists is nothing more than asking clarification through this bill. They will say if passed this bill is still unclear to them, and they have already done that around the country. Where they have passed this particular legislation on parts, the manufacturers have then refused to abide by the bill and forced the dealers in that unfair bargaining position to accept their rates. Since the dealers are unwilling to challenge them in court, the result is the association in a particular state has taken them to the motor vehicle commissioner in that particular state where the manufacturers challenged their standing, and said you are not hurt because you are in an association. No dealer has complained, so it is an unfair bargaining position. We are trying to straighten it out, the only way the playing field can be

leveled in a case like this is for the Legislature to do it. They ask that it be done.

REP. WALLIN, HD 78, Bozeman, wanted to go on record in support of HB 258. The manuals manufacturers require the dealers to work by are printed by the factory, and the dealers are asked for five-, six- and seven-year warranties to be covered by their dealers. The dealers would be happy if all of the manufacturers would go back to a reasonable length of warranty. That has aggravated the cost and aggravates the fellow in the middle.

Steve Turkiewicz, Executive Vice-President of the Montana Automobile Dealers Association which represents 154 franchise auto dealers in Montana, said the intent of this legislation is to reimburse the dealers their costs in meeting the warranty obligations demanded by the manufacturers. **EXHIBIT 10.** They support and ask a do pass recommendation on HB 258.

Don Dahl, Technician at Grimes Motors, Helena, testified in favor of HB 258. He looked at this bill from a technician's point of view. Most technicians are tied directly to the flat rate of the system. There is a great discrepancy existing between warranty time as established by the factory and the Chilton's manual times. To explain this discrepancy he used a base of $38/hr for labor. To do a rear brake job warranty will pay for .8/hr, Chilton's will pay for 1.5/hr., 47% more or $26.60 to the dealer; Chilton's, one hour for a water pump, compared to one-sixth for warranty. To replace the steering gear the factory pays for 2.22/hr., Chilton's pays for 3.4/hr., a transmission overhaul 7.6 hours vs 13.6 hours. The differences between all these fairly common jobs, is 42%. Flat rate times are 13.7 hours factory, 24.1 Chilton's. If you are being paid strictly on the flat rate system, at $10 an hour, the difference is $130 vs $240 by using the dealers' book. The dealer is looking at a difference of $395.20. Taking these figures into account, plus adding manufacturers' stated warranty service contracts, the difference there could cost the dealers a great deal and ultimately mechanics and customers.

Ed Marsenich, Manager at Helena Chrysler Plymouth Dodge, spoke in support of HB 258. He was a technician for five years and has been service manager for two years. He did factory warranty jobs and as a service manager he dispatches these same jobs. The technicians are after jobs the same way any of us do what we do to make money. Their pay is based on factory retail allowances. The lowest paying factory worker jobs directly affect their attitudes which affects efficiency and productivity. Time losses occur on factory warranty jobs, especially on the larger jobs. Montana shops are not large enough to specialize in having a technician for one area of repairs, as in the larger areas where the resident technician does only type of repairs and has an endless supply to work on. The more you do a job, the more efficient you become. These are only a couple of reasons they will appreciate support for this bill.

Bill VanDonsel, Main Auto Body Shop, Helena, which is an independently owned shop, said they need a bill like this. Their main warranty work is painting. On a '91 Suburban under warranty the factory allows 4.6 hours total to paint the roof. If they use the Mitchell manual, they are allowed 7 hours to do that job, a difference of 2.4 hours. To make the money necessary to stay open he has to stay there 2.4 hours after hours to make that up if the job is under warranty, or charge more per hour to make a living. There is a big difference in how it will affect not only the owners of small shops, but the technicians who are working under a flat rate pay scale. Mitchell manuals are widely accepted, insurance companies use them and pay those rates. The only way to survive is to not do the work, or raise the labor rate which their competitors would object to. These rates are set so that a journeyman body man can do that job with the right tools in that particular time. He doesn't know any body man who can do some of these warranty jobs as quickly as they say.

Dave Pierce, Dodge dealer in Great Falls, MT, asked for support on HB 258. They charge $36/hr for labor which is going to have to go up to be in line with Chevrolet to be profitable. Chrysler pays him $30/hr for warranty work. They allow them a small percentage over cost for parts. If they wrote a check when the job was done, he might be able to live with it, but the 90 to 120 days wait for his money really messes him up. They pay their technicians a flat rate $11.50 a flat rate hour. In twenty years in the car business he has seen almost no technicians that can do a warranty job in the time the manufacturer allows. One of their technicians who is well educated and one of the finest technicians he has seen in 20 years in the car business, did a crank job on a V-6 motor. The time allowed him by the manufacturer to pull it out, take it down and repair it was about 7 hours. Actual time this job took was closer to 12 hours. He obviously lost money on that one. Technicians become very, very reluctant to do any warranty work. Some dealers were not going to do any more warranty work on vehicles they did not sell because they were losing money on them. The $11.50/hr he pays the technician to work on warranty jobs, the insurance paid in the shops, it costs a fortune in Montana to heat these big shops, gas, lights, utilities, service wipers, another area they kill us on is our warranty clerk who has to do the warranty work (it would take six months to show someone how to do a warranty claim correctly because the manuals are that difficult) all adds up to an expensive operation. The money does not come from the manufacturer in the form of cash, it comes as credit on your parts bill. You never really see the cash. A dealer should be paid retail price the same as a customer pays. It is only fair to the dealer. The manufacturers did build a warranty for the manufacturer, not the seller. It is stamped on every car that is sold. It is their warranty and they have a responsibility to fix it and they have the responsibility to pay the person properly to repair that vehicle. Sixty percent of his work is warranty work. It is a wonderful warranty for the consumer, because they do the repairs, but they are asking the dealers to do them at a loss. He

strongly urged support of HB 258.

Steve Gilreath, operator of Hjelm's Body Shop, an independent shop in Helena, said the consumer themselves are getting left out of this discussion. You have the attitudes of the technicians not wanting to do the warranty work on all the vehicles that are coming in. The quality of the work may be substandard and the receipts to the shop are a hassle to the owner because of the jobs that have been hurried up and gone through in the first place so the technician can get close to the flat rate time provided, which in their case under the warranty time is not close to what they normally charge for. Eventually the consumer really takes the brunt with lost use of the car, and this hassle. He encouraged support of the bill.

Dan Haasakker, Educator in the Vocational Education, is in favor of this bill. He wants to give his boys a chance in that field to be able to make a fair wage rate and to go on and have a good chance to train them so they can make a profession out of it.

Kay Ogren, Missoula, is a Ford Toyota dealer. She said she had heard the word retail several times today. They are asking for this in the area of parts and service. The gross profits spoken of earlier when filtered down through to the net profit is less than one percent nationally for all 25,000 auto dealers for the entire operation. In the service department area the target is keeping yourself to a one percent loss or break even in the service area. Her losses in 1989 were $370,000 in the service department and after a very expensive consultant was in for six months, her losses were kept to $100,070 in the service department for 1990. The impact of the warranty in parts alone after expenses lost her $72,199 on warranty parts last year. After all adjustments, and they are one of the bigger stores in Montana, they broke even for the past year. They get guidelines from the factory and all of Bitterroot Motors' expenses are in line or less than the averages of counterparts with one exception. She has a new building that costs her $8,000 in higher expenses than guidelines allows. They have lower expenses in some other areas.

One of her franchises requires her to fix cars no matter where consumers buy them. She and her technician are asked to subsidize repairs on a car not purchased from her. Toyota has a worldwide franchise requiring a car from anywhere to be fixed. The domestics did not have that until recently. She is stuck with the Ford franchise, but they are not stuck with her. She does not feel this is very fair. They sent her an addendum to her Ford franchise a few months ago. She has no say on it. It said 'you will repair every Ford that comes to your door'. She does that because she is sympathetic to travelers, or anybody who has a car that has problems, but it is adding tremendous costs. Factories are circumventing dealers through what are called program cars. In 1991 10% of all new cars will not be sold through new car dealers; 10% of all new cars will be factory cars sold through

other companies. One out of ten cars will be coming back to her service department wanting her to subsidize repairs on that car. Not only wanting her to subsidize what used to be a 12/12, she will have to subsidize a car with 60,000 miles warranty on it which has a much higher warranty cost which the factory becomes much more reluctant to pay back on. They are asking help on what they consider a very fair bill to try to stay in business and for the consumer to be fairly treated by the factory and the dealer.

Dan Rice, whose family has been involved in the automobile business since 1946, said there may be opposition to this bill saying automobile dealers make fabulous incomes, they have fabulous facilities, times are good, and the times are tough for the manufacturer. Since 1979 Montana has lost nearly 30% of its auto dealers. Most of these losses come from rural markets. In 1979 there were 212 franchised automobile dealers, now there are 154. It is unlikely that those points or dealerships were closed because they had retirement profits to spend. It is a tough business. It is not reasonable that dealers should have to subsidize repairs on cars under warranty by the factory.

<u>Opponents' Testimony</u>:

Tom Valley, Motor Vehicle Manufacturers Association, which includes Ford, General Motors, Chrysler, Domestic Honda, and heavy truck manufacturers, said the issue here is the franchise agreements, the contracts between the dealers and the manufacturers. These are not developed in a vacuum. Dealer counselors, dealer advisory boards have a very active role in developing the franchise agreements which the dealers sign. In essence the dealers agree to the terms of their contracts. Rather than renegotiating these issues through dealer counsel, this lets the burden be placed upon the Montana Legislature, undermining their contracts as a method of increasing profits in times that are tough. Proposals like this one should not be considered. There is no clear evidence that current manufacturers warranty practices aren't fair. The relationship between the manufacturer and dealer is not adversarial. Dealers are the lifeblood of the manufacturers. His association and theirs, NADA, are currently studying these issues and will have documents available for you in the very near future. Until you have a chance to review these recommendations, any legislation would be premature. It is unusual for the state statutes to set the rates that one party must pay another for services under a contract, and in this instance a very small group of these would prosper at the expense of others by your decisions. Please take the time to review the recommendations of his association, and NADA before accepting this bill. **EXHIBIT 11.**

Norman Sherbert, General Motors Corporation, Regional Manager for Government Relations, said **Al Thomas, Director of their Consumer Relations and Service Organization,** is recognized not only with the General Motors but within the industry as an expert in warranty reimbursement and working with dealer organizations.

Dealers have signed franchise agreements of their own free will. It has been suggested by proponents to the bill that these franchise agreements are done in somewhat of a vacuum. With the thousands and thousands throughout the country it would be virtually impossible to sit down with every dealer and draft an agreement that would be acceptable to both parties, therefore they rely very heavily on the National Auto Dealers Associations to help negotiate these agreements. That has been done regularly over the years. NADA has complimented General Motors specifically and the auto industry in general recognizing that times don't remain stagnant, they change. They have just renegotiated their franchise agreement and signed with General Motors just recently and entered into a new agreement. This particular bill would negate that agreement and would impose on the manufacturers the most stringent warranty in this country. That is not said lightly. He recognizes that Montana has pride and been a bell ringer in instances and protects their dealer organizations. He respects that. He has many friends on both sides.

They recognize that times are bad, not only in Montana, they are bad in all 49 states. Just this morning General Motors announced that in the last quarter of 1990 they were in the red $1.6 billion, and for the year $2 billion. This total industry is in chaos right now. Now is not the time to enter into this type of legislation. They recognize the dealers in Montana have a problem, they are struggling just as every dealer in the United States is. To embark upon this new type of legislation which mandates specific payback to the dealer, is wrong.

In the price of the car paid by consumers, there is an element directed towards warranty. They are confident about how they go about developing information. It isn't done on a willy-nilly basis. If HB 258 would pass in this form, there is no question that there would be an additional price to doing business in Montana. He suggested this is not a dealer vs manufacturer, this is a dealer vs your constituents. They reserve the right to add an extra item on the price of vehicles sold in Montana for this particular issue. The car industry is very cyclic. In the 1973-74 era with the Iranian situation, again in the 1978-79 era with the oil embargo, and now with the Gulf War, the automobile business has had trouble. You can almost exactly follow the economy of the U.S. by circumstances at a certain time. The purchasing power and purchasing confidence of the people follow that particular pattern. The dealer bodies in five of the nine states he covers, are coming to the Legislature to try to recoup some of the money and/or business that they are losing because of the economic times. It is predictable. He asked for a No vote on this issue.

Al Thomas, representing General Motors as its Director of Consumer Relations and Service, said they comply with Montana laws that exist currently which are fair to everyone. They oppose HB 258 because it will make Montana law decidedly unfair. **EXHIBIT 13.**

Questions From Committee Members:

REP. BENEDICT asked in view of some of the testimony heard from the dealers, intimidation, that type of thing, did I hear you threaten this Committee and the Montana Legislature with a selective and punitive higher price directed towards Montana's consumers if this legislation were passed? **Norm Sherbert** explained he said if the experience shown in the State of Montana if this bill should pass should show that if increased costs were to occur because of this, General Motors could reserve the right to add that price for warranty on the sticker price of the vehicles sold in Montana.

REP. SCOTT said in your testimony you kept referring to the fact this service agreement contract between the manufacturer and the dealers was of their own free will and by their choice. What would the manufacturer do if the dealer refused to sign the service contract? **Al Thomas** answered if the dealer refused to sign the sales and service agreement, you would be without representation in that field. Those people who bought vehicles from that dealer would have to scramble and drive a whole lot further distances to try to get warranty service from some other dealers holding that sales and service agreement from an authorized GM dealer. That was what I meant when he said the tables have completely turned. Dealers can indeed refuse to sign their agreement, but that doesn't mean they have an empty building any more because there are a whole lot of other manufacturers that would like to jump in there and take their place. It is a very competitive market. **REP. SCOTT** said he wasn't hearing that this was a sales and service contract. He kept hearing a service contract. **Mr. Thomas** said it is a sales and service agreement. **REP. SCOTT** commented that if they want to give up their dealership they can say if you are not going to give me this, I will quit selling General Motors. **Mr. Thomas** agreed there are plenty of competitors, if they see that as a proper market, who will jump right in there and replace GM.

REP. WALLIN said you indicated by using Chilton's manual the factory would be paying that much more than they are paying. Maybe we ought to turn that around and maybe say the factories are getting a bargain by paying that much less than they are. Is that correct? **Mr. Thomas** said you could put it that way, but as they see it, if you are paying more, you are paying more for absolutely no reason because those are inflated times. They do time studies and the others don't. Dealers and independent shops use manuals that have the highest times as a bible to prove to customers that is how much time it takes to do the repair.

REP. CROMLEY asked if the rate of $38 per hour you charged under warranty, is consistent with the standard rate in town? **Dave Pierce** said it was. When they signed a new agreement with Chrysler last May, they had a stack of forms, and if you don't sign those, no franchise. The established customer labor rate is blank and the dealer that was there had an established rate of

$30 an hour. They told him they would establish a rate after he took over the dealership, so he signed the blank form, and they sent it back at $30 an hour. Ford and Chevrolet are $38, GMC is $40, and Chrysler Motors is $44. When you are working on a truck some of the cars that have all of the new equipment them, you would have to buy thousands of dollars in special tools to do the warranty work on them, and it is very, very expensive. The last 120 days they had a state bid on cars. He bid 1991 models to the State of Montana. The manufacturers have what they call "bid assistance". He doesn't know what they make on a car when they sell it to him, but they said to bid the cars to Montana they would take his dealer invoice and give assistance per unit of $3500. He doesn't know if it is going to cost $3500 over the life of a warranted car, but it gives an indication of what they have for markup. He was beat out by General Motors.

REP. CROMLEY said his experience with warranty work has been that it is not preferred work and is secondary to regular repair work. **Mr. Thomas** answered that may be the current perception, but it is brought about by using inflated labor time guides to do customer paid work, or non warranty work. They time study the labor operations in their labor time guide, and use hand tools, they do not use automatic tools for anything, and they add extra time for moving a vehicle in and out, and going to get parts. There is even an operation number that you could use to add time, you can use up to 30,000 miles. In back of their labor time guide there is a piece of paper that if the dealer doesn't feel the time is accurate, they can mail it in. Seventy-six percent of those they receive from all over the country last year ended up as new labor operations with new times added, and another thirty-six percent on top of that ended up as extra time in labor operations. They only received one from Montana.

REP. SHEILA RICE asked what is your feeling about comparing your actual labor times with something like Chilton's as opposed to the franchise time allowance? What is your best estimate of what it really takes your technicians to finish a job? **Dan Rice** said to take them on balance because if we start to focus on one particular time guide, he can find one at one end of the spectrum and someone else will find one at the other end. For an average operation factory time guides, as evidenced by 56% labor and times were increased plus 36% requests for time guide review were increased, if that were not the case 92% would be increased. The Chilton or Mitchell or the motors manuals are close. There is a terrific watchdog over those in the insurance industry, because although the insurance industry is typically connected with body repair, it includes a tremendous amount of mechanical repairs as well. In a front end accident a water pump or transmission housing might be broken, so they pay for mechanical work as well. He has enough confidence in the vigilance of the insurance companies to not overpay on claims. Those manuals are close as well. If he were to charge a consumer $100 for a repair, that consumer would hand him a Visa or Mastercard or write a check. If the charge is to a manufacturer there is a staggering amount of

paperwork or electronic equipment that has to be purchased before these claims can be submitted. If the repair is done for a customer who pays for it and the customer pays for it and comes back to him and he has to do the work over, and it is a relatively short term arrangement. With a manufacturer, that manufacturer can come back many years after I have done this repair. In a situation where the consumer has complained about the oil leak in his garage floor, and he thinks his oil pan is leaking. His power steering pump may also be leaking. The technician discovered both. If the consumer didn't authorize power steering pump repair, three or four years later the manufacturer actually can come back and demand a refund of the entire claim, so there is a real disproportionate burden of doing the two repairs. Chilton's or Motors or Mitchell are much closer to what it actually takes.

REP. TUNBY it seems like you are saying dealers are overcharging your customers. If that is the case why are so many dealerships closing? Why are those franchises losing their repair people? **Mr. Thomas** answered that one of the dealers this morning talked about how much money was lost in the service department, there are a whole bunch of businesses making money in the service departments doing mechanical repairs. Dealer accounting tends to treat service departments as a place where you make x number of dollars and then there is an understood fixed net loss at the end of the year which is made up by selling vehicles, so a lot of expenses are charged to the service departments. Dealers are going out of business right now and General Motors is currently losing $2 billion because vehicles are not selling because of the Persian Gulf crisis and the current recession. What they don't build, they can't sell, they can't make any money. Vehicles have gotten more expensive which lengthens the amount of time it takes between the time a person buys a new vehicle to the time they buy a replacement vehicle. There are many factors coming together causing dealers to go out of business. Manufacturers would fall by the wayside if we were to get in serious financial troubles. GM is not about to fold, but they did lose $2 billion. It would not be fair to say manufacturers are putting dealers out of business. They don't sell anything unless it is sold through a dealer.

REP. BENEDICT said it recognized there are superstars in every field, and he suspects in the time studies there are people who are superstars at what they do, too. Could you give an indication of maybe the type of salary range that is involved with the people who do your time studies? Are they making what the average worker in Montana makes, and do they do the same kind of work, are they in the same kind of environment? Are they average people doing these time studies or are they superstars? **Mr. Thomas** explained they are making more money because of the UAW union. They are no more skilled than the average mechanic in Montana. They are using hand tools to do the repairs. They don't try to pick superstars. The ones around Detroit are probably paid a bit more. They also do time studies in places like Buffalo, in

dealerships in trying to check their own studies. This isn't the first time this has come up, they are very cognizant that there is a perception their labor time guides are shorter than the rest. Talking about the 56% that amounted to additional labor and time operations being added and 36% more time added, that is out of 38,000 labor operations, and only 1,133 requests for change nationally. Somewhere along the lines somebody thinks our labor time guides are pretty accurate.

REP. PAVLOVICH asked his version of the time studies. **Mike Grimes** said he has watched video tapes that General Motors has produced on time studies over the years and they have been shown to the car technicians. Very few of the technicians agree that the factory time studies were realistic. They do an honest job trying to do the time studies. They are not out trying to cheat the dealers. There are two reasons the time studies are wrong: Diagnostic work technicians have been doing that work and are familiar with it; our technicians don't know about that because they have not been doing much of it. When we can finally get the thing diagnosed, we can read the memory computer to find out what the problem is. One of the technicians told him it took him 32 hours trying to find a problem with a car before they finally found out what the problem was. The flat rate time for fixing that problem is one hour, but they spent 32 hours trying to find the problem. That is one of the reasons the time guide is not fair. The other reason it is not fair is the competitive nature of the repair. Our technicians in dealerships in Montana and in other states are small and they have to do multifranchise work. A technician might work on a Honda one day, a Ford one day, a Chevrolet the next day, he may not have seen that repair for a year, maybe never, that is why their time studies are unfair, they do not take these circumstances into account.

REP. STELLA JEAN HANSEN asked if she felt in light of the opposition testimony her franchise would in any way be endangered if this bill were to pass? **Ms. Ogren** said she is personally worried about that since in the interest of time of this group few of the other six or seven other dealers could not actually testify. It could be only those testifying would be singled out. **REP. HANSEN** asked if it isn't true that the warranty is really a bargaining point under your contract to sell that car. It would not damage your ability to use that as far as your customers are concerned. A better warranty is a bargaining point in selling your cars. **Ms. Ogren** said she won't change the warranty, but if you look at an auto that might be 6/60 or a Toyota might be 7/70, yes, that is a selling point for the cars.

<u>Closing by Sponsor</u>:

REP. BACHINI said he learned a great deal about the automobile business. He thanked the proponents for their excellent testimony. One of his concerns is that maybe the manufacturers would retaliate if this type of legislation is adopted. Before he agreed to accept this legislation, he called a couple of dealers.

They didn't feel threatened, but if this legislation does pass and they are not threatened, there will be some lawyers making some big money. This is a very fair bill. The proponents have said these cars are coming in with extended warranties, and it is harder to work on them. Other states passed legislation addressing this issue and more states are considering legislation to address this. Dealers are being held to the manufacturers manual. They are captive within that manual. They are asking to use three manuals that are independent manuals which insurance companies use. That is very fair. This problem is long standing. Problems with warranty work have been going on for a long time. What about the loss to the small dealer? That is a great loss. He has a harder chance to recoup than the big guy. The figures on the fiscal note are not correct, and he will explain them during executive session. The technicians gave an excellent testimony of what they run into, and also what the dealer has to eat when he has to take that auto, car, pickup to another body shop to take care of a paint job which he is not able to do. Somebody is eating that up. The dealer passes it on to the consumer on a lot of work, so this is a consumer bill. To do what is right with this bill it should receive a do pass because it is a pro-consumer bill, but it also will put the dealers in Montana on a fair playing field by getting reimbursed on a fair schedule rather than on a schedule set by the manufacturer.

ADJOURNMENT

Adjournment: 12:00 noon

Bob Bachini
REP. BOB BACHINI, CHAIRMAN

Jo Lahti
JO LAHTI, Secretary

BB/jl

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL DATE Feb. 14, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE BARNETT	✓		
REP. STEVE BENEDICT	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. STELLA JEAN HANSEN	✓		
REP. H.S."SONNY" HANSON	✓		
REP. TOM KILPATRICK	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. SCOTT MCCULLOCH	✓		
REP. BOB PAVLOVICH	✓		
REP. JOHN SCOTT	✓		
REP. DON STEPPLER	✓		
REP. ROLPH TUNBY	✓		
REP. NORM WALLIN	✓		
REP. SHEILA RICE, VICE-CHAIR	✓		
REP. BOB BACHINI, CHAIRMAN	✓		

Exhibit #9

TESTIMONY BEFORE HOUSE BUSINESS ECONOMIC DEVELOPMENT COMMITTEE

HOUSE BILL 258: RETAIL LABOR AND PARTS WARRANTY

Mike Grimes, Chairman, MADA
February 14, 1991

EXHIBIT 9
DATE 2-14-91
HB 258

Our dealers support this bill for these primary reasons:

FIRST: As dealers, we find ourselves in the position of having to subsidize the manufacturers' warranties. Years ago the Montana legislature enacted the Montana Franchise Law to protect the business people of Montana. As part of that law, motor vehicle manufacturers were required to reimburse their dealers at the dealer's prevailing retail labor rate. Unfortunately, the law did not address the other two items which make up the cost of a warranty repair. Those two items are the time allowed to perform the work (referred to as Flat Rate Time) and the price of the parts required to complete the repair. The labor times allowed by the typical factory flat rate guide are about 30 percent less than the prevailing nationally-recognized retail flat rate manuals. The reimbursement for parts used in a warranty repair is typically 23 percent gross profit compared to a normal retail selling price, as suggested by the manufacturer, of 40 percent gross profit. Therefore, the dealer receives approximately half as much gross profit on parts in a warranty repair before considering any overhead expense.

SECOND: We support this bill because we are forced to ask our technicians and service and parts employees to also subsidize the factories' warranties. Technicians are paid based upon Flat Rate Time and, therefore, receive about 30 percent less while doing warranty repair work as compared to normal customer retail work. This is not fair to our employees!

THIRD: We support this bill for reasons related to our consumers. With the manufacturers required to pay retail rates and the patently unfair labor times and parts reimbursement, there is a constant upward push on retail rates which are ultimately paid by the consumer. This also has the tendency to push consumers away from the dealerships for regular service work. This situation is very similar to the way insufficient Medicare payments by the federal government tends to push up health care costs for the average person.

HB 258

We are also concerned about the level of service our consumers can expect. Consider for a minute a consumer's vehicle with a serious paint defect. Many dealers do not have body and paint shops and must therefore send this type of work out to the independent body shops. Those shops base their estimates and repair costs on the nationally-recognized body repair manuals. This is true for retail consumer work and insurance work, and is, of course, what the dealership will have to pay to repair the consumer's vehicle. The dealer, however, will be reimbursed based upon the factory Flat Rate Time. In many cases, this will be 40-50 percent less than that charged by the body shop.

What level of service can that consumer expect, especially if the vehicle in question was not purchased from the dealer doing the repair?

Dealers and manufacturers alike are extremely concerned with customer satisfaction. But the question remains as to who is going to pay!

Obviously this situation has existed for a long time, so why do we come to you now? Primarily two reasons.

FIRST: A smaller pie----dealers across this country are struggling to survive. Nationally, net profit margins are just over one percent for the average new car dealership. In Montana I'm certain it is below that level. As more and more dealerships close their doors, there is an obvious negative impact on the state's economy and a hardship imposed upon our consumers and employees alike.

SECOND: Probably more important--regarding why we are here now--is the length of the warranties we are subsidizing. When warranties only lasted one year, and with the reliability of today's vehicles, our subvention was tolerable at best. But now, with warranties running as long as seven years, our shops are fast becoming nothing but warranty repair centers. We are doing the same work at a tremendous discount to the manufacturer that would have formerly been retail work to our technicians.

If the manufacturers want to play warranty wars, let them bare (bear) the cost of their marketing decisions.

I urge you to support this bill

EXHIBIT 10
DATE 2-14-91
HB 258

TESTIMONY SUPPORTING HOUSE BILL 258
FEBRUARY 14, 1991
STEVE TURKIEWICZ
MONTANA AUTOMOBILE DEALERS ASSOCIATION

In the past twenty years, the issue of warranty reimbursement has been before various state legislatures in various forms, including ours. The intent of the legislation was to reimburse the dealers their costs in meeting the warranty obligations given by the manufacturers. In past years legislation has been passed that was thought to adequately address the issue.

In fact, we thought we had with it our law, stating, "The manufacturer must compensate an authorized dealer who performs work to rectify the manufacturer's product or warranty defect or delivery and preparation obligations at the dealer's regular established retail rate for similar work." We thought this language would curtail the dealer's subsidy for the factory. Since the bill was passed, the manufacturers have been pretty good in paying the "retail rate".

But every service job in a dealership is made up of three components: the rate - the cost per hour the shop charges; the flat rate - the time needed to complete the job; and thirdly the price of the parts replaced. But, even with our law, the manufacturers are not paying the full cost of warranty work because they require the dealers to use the manufacturer's own flat rate manual to determine the time required to complete a job and the manufacturer's have their own schedule for reimbursement for parts.

Other legislatures have passed bills reflecting the necessary language to bring dealers reasonable compensation for their warranty work for the manufacturers. Still dealers are losing money on warranty work. One study indicates dealers lost $19.17 on the parts and labor on the average warranty job and made $2.95 on the parts and labor on the average retail job.

West Virginia now requires no manufacturer, " pay its dealers an amount less than that charged by the dealer to retail customers of the dealer for nonwarranty and nonrecall work of the like kind: and in no event shall any manufacturer compensate for warranty and retail work based on a flat rate figure that is less than what the dealer charges for retail work."

Texas law now states: In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged for nonwarranty work of like kind."

New Jersey now law states: "The motor vehicle franchisor shall reimburse each motor vehicle franchisee for such services as are rendered and for such parts as are supplied, in an amount equal to the prevailing price charged by such motor vehicle franchisee for such services and parts in circumstances where such services are rendered or such parts supplied other than pursuant to warranty". The law goes on to state the retail price can't be unreasonable.

Five other states have adopted similar language to protect the dealers. And, at least seven current legislatures are considering bills to address the short fall in warranty reimbursement.

As part of the continued evolution of strengthening the dealers ability to recoup

Ex. 10
2-14-91
HB 258

warranty work costs, our proposal specifies the manuals for flat rate time the dealers will be using in the repair equation that is their retail time. This clearly specifies to the dealer and the manufacturer what "retail" is and how it is to be derived.

The manuals specified in the proposal are Chilton's, Motors or Mitchell. These manuals are nationally recognized as the flat rate manuals used for retail labor times throughout the nation. These manuals determine their times by a program of continually surveying independent or retail automotive repair outlets. Their figures are accepted by insurance companies and independent extended warranty companies.

In various comparisons, we have found the differences between factory times and the independent manuals to range as low as 0% to 167% depending on the repair operation. But, by and large the average difference is in the 50% range. The times generally reflect the needs of an average trained auto mechanic using factory recommended tools and factory recommended repair procedures.

The times include allowances for vehicle repair preparation, normal clean-up associated with repair, verification of repair, mechanics personal needs, preventative measures and any other service that would normally accompany an individual operation.

Time don't include training or excessive reference time on unfamiliar operations. Nor do they include allowance for diagnosis, machine operations, booking the job or any special courtesy services that may be performed.

The labor times are determined by the manual's editors with extensive mechanical backgrounds in the automotive industry. Times are based on field research surveys, data supplied by the vehicle manufacturers and actual field studies.

Given the widespread acceptance of the specified manuals, they offer a credible source for determining the retail flat rate to be used by Montana's dealers in performing their warranty obligations. After all the point here is that it not reasonable for the manufacturer to ask us to lose money fulfilling the promise made by him to Montana's auto consumer.

We ask your support and a "do pass" recommendation on House Bill 258.

EXHIBIT 11
DATE 2-14-91
HB 258

STATEMENT OF FORD MOTOR COMPANY
Montana House Bill 258

Ford Motor Company respectfully submits the following comments with respect to Montana House Bill 258. Ford is opposed to the changes the bill would make with respect to a manufacturer's obligations to dealers for warranty work performed under dealer franchise agreement. Such legislation is premature, unnecessary and will likely result in higher prices to consumers.

. The National Automobile Dealers Association (NADA) is currently conducting a national study of dealer warranty reimbursement and state legislation on this subject it premature.

A uniform national warranty program, including dealer reimbursement, which treats all dealers and consumers, is the most fair, reasonable and equitable. Any departure from a national program would be difficult and costly to administer. Manufacturers will not likely be able to absorb the increased cost, and such legislation could result in higher prices to consumers. The NADA is presently conducting a national study with respect to warranty reimbursement on data collected from several groups of new vehicle dealers. Ford and other manufacturers have agreed to meet with NADA to review the results of that study, and expect that to be accomplished within the next thirty days. Any action on warranty reimbursement should be postponed to give the industry a chance to review the study results, meet to discuss them and to avoid a patchwork approach to the issue.

. Changes to the warranty reimbursement law are unnecessary because the dealers' parts and service business is presently profitable and the trend in gross margins continues to improve.

Ford dealer profitability on parts and service business, including warranty, has increased over the past five years by 45% and parts and service gross margins (sales less parts cost and technician wages) have increased 54% from 1985 through 1989. The average dealer gross margin for warranty repairs (on a percentage of sales basis) has improved from 39.8% in 1985 to 40.6% in 1989. Warranty gross margins have been higher than the average parts and service business.

Specific reference in the bill to only three independently published flat-rate labor time guides effectively creates a legislated market for those publications to the detriment of not only manufacturer-published guides but also to potential new entrants in the labor guide publishing business.

For all of these reasons, Toyota submits that HB 258 should be amended to delete reference to specific labor time guide publications by concluding Section 61-4-204 (4) with the words "of a like kind."

Thank you for the opportunity to comment on this legislation.

Very truly yours,

E. Quist

Earl C. Quist
State Government Affairs Manager

Navistar International
Transportation Corp.

455 North Cityfront Plaza Drive
Chicago Illinois 60611
Telephone 312 836-2000

EXHIBIT 12
DATE 2-14-91
HB 258

Exhibit #10

NAVISTAR.

February 13, 1991

The Honorable Bob Bacchini
Chairman
Committee on Business and Economic Development
Montana House of Representatives
State Capitol
Helena, Montana 59620

Dear Mr. Chairman:

I am writing to express my concern about HB 258, which would amend Montana law concerning motor vehicle manufacturers' reimbursement to their dealers for parts used and labor performed under warranty. If this bill is enacted as introduced, it will have an adverse impact on manufacturers of medium- and heavy-duty trucks (those over 10,000 pounds GVWR) without benefitting dealers who sell such trucks.

Concerning parts used in warranty repairs, HB 258 would require the manufacturer to reimburse the dealer "at the same rate the dealer charges to its retail customers." While the intent of this language seems laudable, it is totally inapplicable to the medium- and heavy-duty truck market.

Contrary to the situation in the light-duty vehicle market, where there appears to be a considerable difference between the prices at which manufacturers reimburse their dealers for warranty parts and the prices dealers charge retail customers for the same parts in repairs not under warranty, few, if any, truck parts are sold to customers at full retail price. Most heavy-duty vehicle owners operate fleets of trucks, purchase some vehicles every year and, because of high mileage, generate a significant amount of repair work.

For these reasons, heavy-duty manufacturers typically recommend discounts from retail prices to fleet customers on parts sold outside warranty. These discount prices are published in parts price books that are provided not only to dealers but also to customers. As a result, a heavy-duty vehicle customer knows the discounted price of any given part and may bargain to get the best price. In addition, the heavy-duty parts market is highly competitive because vehicle manufacturers themselves manufacture only 20-40% of the completed vehicle and truck manufacturers sell parts in direct competition with the parts suppliers.

Because of this customer leverage and competition from parts suppliers, Navistar's fleet discount parts prices are in the

range of 20-30% markup over dealer net--the price the dealer pays when the part is originally stocked--compared to the 40% retail markup that is more typical in the automobile/light truck market. Navistar's standard dealer reimbursement for parts used in warranty repairs is the dealer net price plus 26%. Thus, Navistar's dealers already often earn more on warranty parts than they do on parts sold to retail customers.

As for labor, Navistar has developed, in conjunction with its dealers, a list of scheduled repair procedures for warranty work. Rather than be forced to pay according to schedules in the books cited in HB 258, Navistar would prefer to be able to reimburse dealers according to its own schedules--which the dealers have already agreed are reasonable.

It appears that HB 253 has been drafted to remedy perceived problems in the light-duty vehicle market and is inappropriate when applied to the commercial vehicle market. For this reason, Navistar requests that the bill be amended to exempt warranty repairs on vehicles over 10,000 pounds GVWR from its provisions. If this is not agreeable, Navistar would strongly suggest amending the parts language to require manufacturers only to reimburse dealers on warranty parts and labor at the same prices and rates charged to other customers.

Thank you for your consideration of our views on this matter. If you have any questions, please do not hesitate to contact me at (312) 836-2646.

Sincerely yours,

Thomas L. Trueblood

Thomas L. Trueblood
Manager, Public Affairs Programs

EXHIBIT 12
DATE 2-14-91
HB 258

Exhibit #13

MY NAME IS AL THOMAS, AND I REPRESENT GENERAL MOTORS AS ITS DIRECTOR OF CONSUMER RELATIONS AND SERVICE. WE APPRECIATE THIS OPPORTUNITY TO APPEAR AND PROVIDE YOU OUR INPUT ON HOUSE BILL 258.

AT THE OUTSET, LET ME ASSURE YOU THAT GM INTENDS TO ABIDE BY STATE AND FEDERAL LAWS WHEREVER IT DOES BUSINESS, INCLUDING MONTANA.

WE COMPLY WITH MONTANA LAW AS IT EXISTS CURRENTLY, AND THAT LAW IS FAIR TO GM, GM DEALERS AND GM VEHICLE OWNERS.

HOUSE BILL 258 IN OUR OPINION WILL MAKE MONTANA LAW DECIDEDLY UNFAIR, BOTH FOR GM AND MONTANA CONSUMERS.

HOUSE BILL 258 PROVIDES AT SECTION 1, PARAGRAPH (4) THAT:

> THE MANUFACTURER MUST COMPENSATE AN AUTHORIZED DEALER <u>FOR LABOR, PARTS, AND OTHER EXPENSES INCURRED BY A DEALER</u> WHO PERFORMS WORK TO RECTIFY THE MANUFACTURER'S PRODUCT OR WARRANTY DEFECT OR <u>FOR</u> DELIVERY AND PREPARATION OBLIGATIONS AT THE <u>SAME</u> RATE <u>THE DEALER CHARGES TO ITS RETAIL CUSTOMERS</u> FOR <u>NON-WARRANTY</u> WORK <u>OF A LIKE KIND</u>, ...
> ...., <u>BASED UPON RETAIL FLAT RATE LABOR TIME GUIDES CONTAINED IN THE MOST RECENT VOLUMES OF MOTORS, MITCHELL, OR CHILTON MANUALS.</u>

OUR FIRST CONCERN WITH THIS LANGUAGE IS THE REFERENCE TO: REIMBURSEMENT FOR "PARTS....AT THE SAME RATE THE DEALER CHARGES FOR NON-WARRANTY WORK...."

GM REIMBURSES DEALERS AT THEIR COST +30% FOR PARTS USED IN CONNECTION WITH WARRANTY REPAIRS. IN OUR OPINION THIS MARKUP COMPENSATES DEALERS AT THE SAME RATE AS THE AVERAGE MARKUP OF ALL PARTS SOLD BY THE DEALER TO NON-WARRANTY CUSTOMERS. DEALERS HAVE SEVERAL CLASSES OF CUSTOMERS RANGING FROM OFF THE STREET STRANGERS TO LOCAL GARAGES, RELATIVES, FLEET CUSTOMERS, LOCAL BUSINESS CUSTOMERS, ETC.

GM IS A SIZEABLE "CAPTIVE" CUSTOMER UNDER WARRANTY. NATIONALLY, WARRANTY REPAIRS REPRESENT 25 PERCENT OF TOTAL GM DEALER SERVICE SALES. AND GM HAS CHOSEN TO LIMIT PERFORMANCE OF WARRANTY REPAIRS ONLY TO AUTHORIZED GM DEALERS. THAT MEANS DEALERS HAVE NO COMPETITION WHEN PERFORMING GM WARRANTY SERVICE. THEY HAVE NO ADVERTISING EXPENSE TO GAIN THIS BUSINESS. INVENTORY EXPENSES IN A WELL RUN PARTS DEPARTMENT, CAN BE HELD TO A MINIMUM. NORMALLY PARTS USED IN WARRANTY REPAIRS WILL FLOW THROUGH WITH LITTLE OR NO SHELF LIFE. IN FACT, DEALERS TAKING ADVANTAGE OF BULK ORDERING, TARGET MASTER DISCOUNTS, STOCK ORDER ALLOWANCES, AND PARTS RETURN ALLOWANCES, CAN LOWER THEIR PER PART COSTS TO WHERE A 30 PERCENT MARKUP CAN EQUAL 40 PERCENT OR MORE, A PROFIT MARGIN THAT IS ACCEPTABLE TO MOST BUSINESSES.

DATE 2-14-91
HB 258

HB 258 ALSO LEAVES A HUGE LOOPHOLE FOR PRICE GOUGING IN THAT NOWHERE DOES IT STATE THE PRICE CHARGED BY THE DEALER FOR NON-WARRANTY WORK MUST BE REASONABLE. IF A DEALER DECIDED TO IGNORE COMPETITION AND MARK PARTS UP 1,000 PERCENT FOR NON-WARRANTY CUSTOMERS, GM WOULD HAVE TO PAY THAT MARK-UP FOR WARRANTY REPAIRS ACCORDING TO HB 258. THE DEALER'S NON-WARRANTY CUSTOMERS OF COURSE WOULD GO ELSEWHERE. BUT GM AS A CAPTIVE CUSTOMER UNDER WARRANTY WOULD HAVE TO PAY.

THE OTHER LANGUAGE WE FIND ESPECIALLY HARMFUL IS THAT DEALERS WILL BE REIMBURSED BY GM FOR WARRANTY LABOR:

> ...., BASED UPON RETAIL FLAT RATE LABOR TIME GUIDES CONTAINED IN THE MOST RECENT VOLUMES OF MOTORS, MITCHELL, OR CHILTON MANUALS.

GM AND ITS DEALERS HAVE A WRITTEN AGREEMENT BY WHICH DEALERS ARE REQUIRED TO USE GM LABOR TIME GUIDES AS THE BASIS FOR WARRANTY HOURLY LABOR CHARGES. THERE IS A GOOD REASON FOR THIS.

GM LABOR TIME ALLOWANCES IN THESE LABOR TIME GUIDES ARE ARRIVED AT THROUGH ACTUAL LABOR TIME STUDIES PERFORMED BY AVERAGE TECHNICIANS USING ONLY HAND TOOLS. ADDITIONAL TIME IS ADDED TO ALLOW FOR MOVING THE VEHICLE IN AND OUT OF A MECHANIC'S WORK STALL, DIAGNOSIS AND SECURING PARTS. ON THE RARE OCCASIONS WHEN GM AND OTHER MANUFACTURERS' LABOR TIME GUIDES HAVE BEEN CHALLENGED, THE RESULT FOR GM HAS ALWAYS BEEN A FINDING THAT OUR

LABOR TIME GUIDES MORE ACCURATELY REFLECT THE ACTUAL, CLOCKED LABOR TIMES NEEDED TO ADEQUATELY PERFORM REPAIRS AND THAT INDEPENDENT LABOR TIME GUIDES, COMMONLY USED TO CALCULATE CUSTOMER PAID REPAIRS, PROVIDE EXCESSIVE ALLOWANCES COMPARED TO REAL WORLD CLOCK TIMES.

OUR OWN INVESTIGATIONS OF INDEPENDENTLY PUBLISHED LABOR TIME GUIDES OVER THE YEARS HAVE SHOWN THAT THEY PROVIDE AN AVERAGE OF 38 TO 40 PERCENT MORE TIME ALLOWANCE THAN THE SAME LABOR OPERATIONS LISTED IN GM TIME GUIDES:

> SOME GOOD EXAMPLES ARE PROVIDED ON THE ART BOARDS BEING HELD BY MY COLLEAGUE (ATTACHED).

THE POINT WE ARE MAKING IS -- WHICH ONE IS CORRECT? AS SHOWN IN OUR EXAMPLES, THE $40 PER HOUR LABOR CHARGE REMAINED CONSTANT. ONLY THE TIME TO REPAIR CHANGED. WHAT IS THE FAIR AMOUNT OF TIME? THAT IS THE CRITICAL QUESTION, BECAUSE NEITHER GM NOR MONTANA CONSUMERS SHOULD PAY ONE NICKEL MORE THAN WHAT IS FAIR.

AS I SAID, GM LABOR TIME GUIDES ARE BASED ON REAL MECHANICS DOING ACTUAL TIME STUDIES USING HAND TOOLS.

OUR INVESTIGATION OF INDEPENDENT TIME GUIDES HAS REVEALED FEW INSTANCES WHERE ACTUAL TIME STUDIES WERE PERFORMED. BY THEIR

DATE 2-14-91
HB 258

OWN ADMISSION, MOST INDEPENDENTS FIRST REVIEW GM DIVISION LABOR TIME GUIDES, THEN SURVEY REPAIR SHOPS AROUND THE COUNTRY, BOTH INDEPENDENT AND AUTHORIZED DEALERS, AND AVERAGE THE TIMES. MOST DO NO AUDITING OR VALIDATING OF THE TIMES REPORTED TO THEM.

MY COLLEAGUE IS HOLDING AN ART BOARD WITH A DIRECT QUOTE FROM THE CHILTON MANUAL AND ANOTHER FROM MOTORS (ATTACHED).

GENERALLY, INDEPENDENT PUBLISHERS MAINTAIN THAT THE REASON THEIR TIMES ARE HIGHER THAN THE GM PUBLISHED TIMES IS THAT THEY SELL MOST OF THEIR MANUALS TO INDEPENDENT REPAIR SHOPS AND SERVICE STATIONS. THESE INDEPENDENTS MAY NOT HAVE THE SPECIAL TOOLS, SPECIAL TRAINING, OR THE BENEFIT OF PERFORMING VARIOUS REPAIRS ON AS FREQUENT A BASIS AS DO DEALERSHIP MECHANICS. WHEREAS A DEALER MECHANIC MAY PERFORM A CERTAIN REPAIR FIVE TIMES A WEEK, THE INDEPENDENT MAY PERFORM THAT SAME REPAIR FIVE TIMES A YEAR.

IF GM DEALERS BELIEVE THE TIME LISTED IN A GM DIVISIONAL LABOR TIME GUIDE IS TOO LOW THEY CAN SUBMIT A FORM TO US CALLED A "REQUEST FOR REVIEW" SHOWING THE RESULTS OF DEALER TIME STUDIES DONE IN THE SHOP. GM THEN REVIEWS THE ORIGINAL TIME STUDIES FOR VERIFICATION. IN 1990 GM RECEIVED ONLY ONE SUCH REQUEST FROM MONTANA DEALERS, ALTHOUGH THERE ARE 73 GM DEALERS IN MONTANA.

AND BEAR IN MIND THAT THERE ARE MORE THAN 38,000 LABOR OPERATIONS COVERING GM CAR AND TRUCK REPAIRS IN GM LABOR TIME GUIDES.

IF ONE WERE TO CAST A CYNICAL EYE ON THE BUSINESS OF PUBLISHING LABOR TIME GUIDES AS A PROFITABLE ENDEAVOR, ONE COULD SIMPLY BUY THE LABOR TIME GUIDES IN EXISTENCE, FIND THE HIGHEST LABOR TIME ALLOWANCE FOR EACH OPERATION PUBLISHED, ADD A HALF HOUR TO THE TIME ALLOWED AND PUBLISH A NEW MANUAL. THE RESULTING NEW LABOR TIME GUIDE WOULD BECOME AN INSTANT BEST SELLER. AFTER ALL, IT IS NOT UNCOMMON FOR DEALERS AND OTHER REPAIR SHOPS TO SHOW CONSUMERS THE LABOR TIME GUIDE BIBLE TO PROVE IT TAKES X NUMBER OF HOURS TO COMPLETE A REPAIR.

HB 258 HAS THE POTENTIAL TO ABUSE MONTANA CONSUMERS BY GIVING OFFICIAL SANCTION TO THE INFLATED LABOR TIMES FOUND IN INDEPENDENT LABOR TIME GUIDES THAT BY THEIR PUBLISHERS' OWN ADMISSION SHOULD NOT BE CONSIDERED OFFICIAL.

IN CONTRAST, THE FACTORY LABOR TIMES TO WHICH DEALERS HAVE CONTRACTUALLY AGREED, ARE BASED ON ACTUAL TIME STUDIES. THEY ARE FAIR TO CONSUMERS, DEALERS, THEIR MECHANICS AND GM.

HOW DOES REQUIRING USE OF NON-GM TIME GUIDES HARM CONSUMERS, DEALERS AND GM?

EXHIBIT 10
DATE 2-14-91
HB 258

IN ADDITION TO THE LABOR TIME GOUGING ALREADY MENTIONED, WARRANTY EXPENSES ARE COSTS WHICH ARE COMMONLY PASSED ON TO CONSUMERS IN THE PRICES CHARGED FOR PRODUCTS. THUS, CONSUMERS WOULD OF NECESSITY BE CHARGED HIGHER PRICES FOR NEW GM VEHICLES IN MONTANA AS A RESULT OF REQUIRING GM TO PAY LABOR RATES INFLATED THROUGH THE USE OF INDEPENDENT, NON-GM LABOR TIME GUIDES. WE BELIEVE OUR COSTS FOR WARRANTY LABOR WILL INCREASE IN MONTANA BY AT LEAST 38 PERCENT.

HOW WILL THIS HARM DEALERS?

PASSING WARRANTY LABOR COSTS ON WILL INCREASE THE COST OF GM VEHICLES SHIPPED TO DEALERS IN MONTANA. THE PROBLEMS OUR INDUSTRY AND DEALERS ARE GOING THROUGH RIGHT NOW AS A RESULT OF THE CURRENT RECESSION AND PERSIAN GULF ACTIVITIES ARE NO SECRET. ANY ACTION WHICH CAUSES UPWARD PRESSURE ON VEHICLE PRICES ULTIMATELY STANDS TO HARM GM DEALERS. DEALERS LOCATED NEAR THE BORDERS OF MONTANA WILL INSTANTLY BE AT A PRICE DISADVANTAGE COMPARED TO DEALERS IN BORDERING STATES. IN ADDITION, ANYTHING WHICH INCREASES THE COSTS OF GM VEHICLES ALSO TENDS TO LENGTHEN THE VEHICLE REPLACEMENT CYCLE AND REDUCE THE NUMBER OF DEALER NEW VEHICLE PURCHASERS EACH YEAR. AS DEALERS SEE FEWER NEW VEHICLE PURCHASERS THEY WILL BE FORCED TO TRY AND MAKE MORE PROFIT PER VEHICLE SOLD. CONSUMERS WILL PAY MORE AND THE NUMBER OF PURCHASERS EACH YEAR WILL CONTINUE TO SHRINK AS A RESULT OF THIS COST/PRICE SPIRAL.

HOW WOULD HB 258 HARM GM?

GM, AS A CAPTIVE CUSTOMER UNDER WARRANTY, ACCOUNTS FOR 25% OF THE REPAIRS PERFORMED BY GM DEALERS NATIONALLY. THIS LEGISLATION UNFAIRLY SINGLES OUT ONE DEALER CUSTOMER TO SUBSIDIZE ALL OF THE REST.

DEALERS OFTEN ARGUE THAT AS WARRANTIES HAVE INCREASED IN LENGTH, MANUFACTURERS HAVE SHIFTED EXPENSES TO THEM. IN FACT, WARRANTY SERVICE AS A PERCENT OF TOTAL DEALER SERVICE SALES HAS REMAINED AT 25 PERCENT NATIONALLY SINCE 1985, EVEN THOUGH OUR WARRANTY HAS GONE FROM 12/12 ON THE WHOLE VEHICLE AND 24/24 ON THE POWERTRAIN TO 6/60 ON THE POWERTRAIN, TO THE CURRENT 36/50 (48/50 ON CADILLACS) ON THE WHOLE VEHICLE.

HIGHER WARRANTY COSTS RESULTING IN HIGHER PRICES FOR MONTANA DEALERS AND MONTANA CONSUMERS WOULD ULTIMATELY HARM GM BY REDUCING THE NUMBER OF NEW VEHICLES SOLD HERE ANNUALLY. IN ADDITION, WE WOULD BE UNABLE TO RECOUP THE INCREASED EXPENSE IMPOSED FOR LABOR PERFORMED ON VEHICLES ALREADY SOLD, YET WELL WITHIN THE WARRANTY PERIOD. SUCH EXPENSES WOULD HAVE TO COME OUT OF EVEN HIGHER NEW VEHICLE PRICES OR CURRENT PROFITS WHICH, IF YOU FOLLOW THE NEWS, ARE ALREADY SEVERELY CHALLENGED.

AND THERE IS AT LEAST ONE IMPORTANT LEGAL ISSUE RAISED BY THIS PROPOSAL. GM DEALERS IN MONTANA HAVE ALL FREELY SIGNED A

EXHIBIT 13
DATE 2-14-91
HB 258

NEW SALES AND SERVICE AGREEMENT WHICH WAS EFFECTIVE NOVEMBER 1, 1990 AND RUNS THROUGH OCTOBER 31, 1995. THIS AGREEMENT REQUIRES THAT GM LABOR TIME GUIDES WILL BE UTILIZED FOR GM WARRANTY REPAIRS. THAT CONTRACT WOULD BE CONTRAVENED BY FORCING GM TO ACCEPT INDEPENDENT LABOR TIME GUIDES TO FIGURE LABOR CHARGES ON WARRANTY CLAIMS.

DEALERS MAY SOMETIMES PRETEND THAT THEY HAVE NO CHOICE BUT TO SIGN THE DEALER AGREEMENT, THAT THEY HAVE NO INPUT -- THE POPULAR NOTION IS THAT GOLIATH GM CONTROLS POOR DAVID THE DEALER.

LADIES AND GENTLEMEN, THIS IS NOT 1947 IT IS 1991 AND I CAN ASSURE YOU THE TABLES HAVE COMPLETELY TURNED. DEALERS IN FACT HAVE THE UPPER HAND WHEN IT COMES TO THEIR LOCAL STATE LEGISLATURES AND IN THE MARKETPLACE TOO. GM IS NOT THE ONLY GAME IN TOWN. WE ARE IN COMPETITION NOT ONLY WITH FORD AND CHRYSLER BUT WITH A NUMBER OF STAUNCH COMPETITORS FROM EUROPE AND JAPAN. WE ARE ALL FIGHTING FOR SHELF SPACE. AND DEALERS, SITTING IN THE CAT BIRD SEAT, HAVE THE SHELF SPACE. THE 1990 GM DEALER SALES AND SERVICE AGREEMENT WAS THE RESULT OF MANY MEETINGS WITH THE NATIONAL AUTO DEALERS ASSOCIATION, LOCAL DEALER GROUPS, AND DIVISIONAL DEALER COUNCIL OFFICERS ELECTED BY THEIR PEERS. IT WASN'T SIMPLY A ONE WAY COMMUNICATION. THE NATIONAL AUTO DEALERS ASSOCIATION PRAISED THE PROCESS LEADING TO THE NEW GM DEALER AGREEMENT AS A MILESTONE IN DEALER FACTORY COMMUNICATIONS AND COOPERATION. THIS IS NOT TO SAY THAT DEALERS ARE NOT

EXPERIENCING PROFIT PROBLEMS RIGHT NOW. BUT A SHORT TERM FIX AT THE MANUFACTURER'S EXPENSE, USING UNPROVEN AND UNTESTED LABOR TIME GUIDES AS PROVIDED FOR IN HB 258, WILL CREATE LONG TERM PROBLEMS, NEEDLESSLY INFLATED PRICES AND INCREASED FINANCIAL DIFFICULTY FOR CONSUMERS ATTEMPTING TO PURCHASE NEW CARS AND TRUCKS, OR GET OLDER ONES SERVICED.

ONE FACTOR CAUSING DEALERS TO PURSUE HIGHER WARRANTY PARTS AND LABOR REIMBURSEMENT IS THAT AS GM PRODUCT QUALITY HAS IMPROVED, LESS WARRANTY WORK IS BEING PERFORMED. DEALERS NATIONALLY ARE SCRAMBLING TO GET MORE OF THE RETAIL/CUSTOMER PAY SERVICE BUSINESS WHICH HAS GONE TO INDEPENDENTS OVER THE LAST 10-20 YEARS. WE HAVE SEVERAL PROJECTS WORKING IN GM TO TRY TO COME UP WITH WAYS TO ASSIST DEALERS IN RECAPTURING THIS BUSINESS AND FILL THE EMPTY MECHANICAL STALLS IN THEIR SHOPS. RAISING COSTS FOR CONSUMERS AND CAPTIVE MANUFACTURERS IN LIEU OF GOING AFTER NEW BUSINESS SIMPLY MASKS THE NEED FOR RETAIL COMPETITIVENESS, AND DEALERS KNOW THAT.

WE RESPECTFULLY REQUEST THAT THIS COMMITTEE DO WHAT IS RIGHT FOR MONTANA CONSUMERS BY REJECTING THE LANGUAGE I'VE REFERRED TO AND VOTE AGAINST HB 258.

THANK YOU.

Ex. 13
2-14-91
HB 258

1989 OLDSMOBILE 98 TOURING SEDAN
FRONT SUSPENSION CONTROL ARM, REPLACE
LABOR RATE = $40.00/HOUR

	GM L.T.G.	CHILTON	MITCHELL	MOTORS
HOURLY LABOR CHARGE	$40.00	$40.00	$40.00	$40.00
TIME	.7 HRS.	1.0 HRS.	.9 HRS.	1.0 HRS.
PRICE	$28.00	$40.00	$36.00	$40.00
% DIFFERENCE		+43%	+29%	+43%

WHAT SHOULD IT COST THE CONSUMER?

EXHIBIT 13
DATE 2-14-91
HB 258

Ex. 13
2-14-91
HB 258

1989 BUICK SKYHAWK
REPLACE WATER PUMP
LABOR RATE = $40.00/HOUR

	GM L.T.G.	CHILTON	MITCHELL	MOTORS
HOURLY LABOR CHARGE	$40.00	$40.00	$40.00	$40.00
TIME	.7 HRS.	1.3 HRS.	1.0 HRS.	1.3 HRS.
PRICE	$28.00	$52.00	$40.00	$52.00
% DIFFERENCE		+85%	+43%	+85%

WHAT SHOULD IT COST THE CONSUMER?

1990 CHEVROLET CAMARO
REPLACE FUEL PUMP (IN TANK)
LABOR RATE = $40.00/HOUR

	GM L.T.G.	CHILTON	MITCHELL	MOTORS
HOURLY LABOR CHARGE	$40.00	$40.00	$40.00	$40.00
TIME	2.5 HRS.	3.6 HRS.	3.8 HRS.	3.6 HRS.
PRICE	$100.00	$144.00	$152.00	$144.00
% DIFFERENCE		+44%	+52%	+44%

WHAT SHOULD IT COST THE CONSUMER?

EXHIBIT 13
DATE 2-14-91
HB 258

Ex. 13
2-14-91
HB 258

1990 CHEVROLET CAPRICE
REPLACE GENERATOR/ALTERNATOR
LABOR RATE = $40.00/HOUR

	GM L.T.G.	CHILTON	MITCHELL	MOTORS
HOURLY LABOR CHARGE	$40.00	$40.00	$40.00	$40.00
TIME	.5 HRS.	.8 HRS.	.7 HRS.	.7 HRS.
PRICE	$20.00	$32.00	$28.00	$28.00
% DIFFERENCE		+60%	+40%	+40%

WHAT SHOULD IT COST THE CONSUMER?

This Manual is published in an attempt to provide meaningful data to the auto service profession and its customers. CHILTON TIME is not intended for use as an indication of the actual time required to perform any of the operations indicated in any particular instance. Actual times to perform an operation will, of course, vary according to such factors as the skill and motivation of the mechanic, the working conditions and tools available, and the condition of the vehicle.

Source: "Chilton Time"
Chilton's 1990 Labor Guide and Parts Manual

© Chilton Book Company
Radnor, PA 19089

EXHIBIT 13
DATE 2-14-91
HB 258

Ex. 13
2-14-91
HB 258

The times reported in this publication are to be used as a GUIDE ONLY. The times reported are principally based on data reported by vehicle manufacturers who have arrived at them by repeated performance of each operation a sufficient number of times under normal shop conditions to establish the requirements of the average mechanic, working under average conditions and following procedures outlined in their service manuals and the "Operational Times" explanation listed in this guide.

Source: Motor Crash Estimating Guide
Labor Operation Times
© Copywright 1989
The Hearst Corporation
New York, NY 10019

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

1 of 2

Business & Econ Dev. COMMITTEE BILL NO. HB 258

DATE Feb. 14, 1991 SPONSOR(S) Rep. Bachini

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tom Valley	Motor Veh Mfg Assoc		✓
Norm Sherbert	General Motor Corp		✓
Al Thomas ~~Norm~~ S	" "		✓
Steve Gilreath	Hjelvis Body Shop	✓	
Bill Van Donsel	Main Auto body	✓	
Kay Ogren	Bitterroot Motors	✓	
Mike Grimes	Montana Auto Dealers	✓	
Dan Haasakker	Vo-Tech Ins Tr	✓	
Tom Walker	Montana Auto Dealers	✓	
Don Dahl	Grimes Mtrs	✓	
E.G. Leipheimer	Discovery Buick	✓	
Dan Rice	Rice Motors	✓	
Steve Turkiewicz	Mt. Auto Dealers	✓	
Dave Pierce	Pierce's Dodge City	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

BUSINESS & ECON DEV COMMITTEE BILL NO. HB 258

DATE 2-14-91 SPONSOR(S) Rep Bachini

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Utterback	Helena Chrysler	✓	
ED MARSENICH	Helena Chrysler Plymouth Dodge	✓	
Tom Harrison	Mt. Auto Dealers Assoc.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on February 15, 1991, at 7:00 a.m.

ROLL CALL

Members Present:
- Bob Bachini, Chairman (D)
- Sheila Rice, Vice-Chair (D)
- Joe Barnett (R)
- Steve Benedict (R)
- Brent Cromley (D)
- Tim Dowell (D)
- Alvin Ellis, Jr. (R)
- Stella Jean Hansen (D)
- H.S. "Sonny" Hanson (R)
- Tom Kilpatrick (D)
- Dick Knox (R)
- Don Larson (D)
- Scott McCulloch (D)
- Bob Pavlovich (D)
- John Scott (D)
- Don Steppler (D)
- Rolph Tunby (R)
- Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Executive action would be taken on bills previously heard, and then HB 587, HB 725, HB 538 and HB 261 would be heard.

EXECUTIVE ACTION ON HOUSE BILL 258

REP. BACHINI asked VICE-CHAIR SHEILA RICE to take the Chair.

Motion/Vote: REP. BACHINI moved amendment #2 on EXHIBIT 1 be adopted. Amendment #2 was unanimously adopted. He further moved amendment #1 be adopted. This second amendment was requested by Navistar. He asked Steve Turkiewicz, Montana Auto Dealers Association, to better explain #1. The amendment intends to exempt trucks 10,000 GVW from the warranty conditions being provided trucks. REP. WALLIN explained a 10,000 GVW truck is a light duty truck. In their lines an F-600 would be a medium duty truck, which is a farm truck. The big semis are heavy duty. REP.

RICE said the amendment in concept is to exempt trucks having 10,000 GVW or over rating. Motion carried unanimously.

REP. BACHINI moved another amendment requested by the recreational vehicle industry to exclude such items as refrigerators, stoves, furnaces, recreational appliances from HB 258. Motion carried unanimously.

Motion **REP. BACHINI** moved HB 258 DO PASS AS AMENDED.

REP. PAVLOVICH asked who gets the money from the flyers he receives in the mail offering extended service contracts depending on how many miles you want. **REP. WALLIN** explained those are extended warranties paid for by the dealers providing there is availability. That money goes back to Ford to buy the insurance policy.

REP. BACHINI explained the fiscal note. Because the motor vehicle manufacturers rely primarily on private attorneys rather than the Attorney General, the fiscal impact under HB 258 would be minimal.

Vote **HB 258 DO PASS AS AMENDED carried unanimously.**

REP. BACHINI resumed as Chairman.

EXECUTIVE ACTION ON HB 541

HB 541 adds a New Section 5 - Annual disclosure report containing a bank's Community Reinvestment Disclosure Report to the State Banking Board showing areas to which they have made loans.

Motion: **REP. STELLA JEAN HANSEN moved HB 541 DO PASS.**

Motion: **REP. BENEDICT** moved to amend HB 541. He said **REP. KADAS** indicated he would not be averse to eliminating the first part of Section 4 on page 6, lines 15 through 21. We don't want to mandate what the banks will do with their money, all we want to do is get the reporting procedures in place. This section leaves it too open as to whether a bank has to loan out money in certain areas. **Mr. Verdon** said the rest of that section defines the first Section and should also be eliminated, thereby eliminating Section 4 entirely.

REP. HANSON said he is against the bill. Banks are already required to do this. Any bank that has federal deposit insurance will still have to provide the information. **REP. BENEDICT** said state chartered banks have to comply with FDIC reporting regulations, but not actually how they loan their money. **REP. HANSON** said FDIC requires the Community Reinvestment Act (CRA) be adhered to; and a state-chartered bank covered by FDIC is required to comply. CRA is emphatic about what can be done.

Vote **The amendments were adopted unanimously.**

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL DATE Feb. 15, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE BARNETT	✓		
REP. STEVE BENEDICT	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. STELLA JEAN HANSEN	✓		
REP. H.S."SONNY" HANSON	✓		
REP. TOM KILPATRICK	✓		
REP. DICK KNOX	✓		
REP. DON LARSON	✓		
REP. SCOTT MCCULLOCH	✓		
REP. BOB PAVLOVICH	✓		
REP. JOHN SCOTT	✓		
REP. DON STEPPLER	✓		
REP. ROLPH TUNBY	✓		
REP. NORM WALLIN	✓		
REP. SHEILA RICE, VICE-CHAIR	✓		
REP. BOB BACHINI, CHAIRMAN	✓		

EXHIBIT 1
DATE 2-15-91
258

Amendments to House Bill No. 258
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 15, 1991

1. Page 3, line 10.
Strike: "The"
Insert: "Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the"

2. Page 3, line 18.
Following: "manuals"
Insert: "if the dealer uses the manual as the basis for computing charges for both warranty work and retail work"

HOUSE STANDING COMMITTEE REPORT

February 15, 1991

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 258 (first reading copy -- white) do pass as amended .

Signed: _____
Bob Bachini, Chairman

And, that such amendments read:

1. Page 3, line 10.
Strike: "The"
Insert: "Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the"

2. Page 3, line 18.
Following: "manuals"
Insert: "if the dealer uses the manual as the basis for computing charges for both warranty work and retail work"

CHAIRMAN--J. D. LYNCH
NORMAL SCHEDULE==> SITE: ROOM 410 DAYS: M,T,W,T,F TIME: 10:00 A.M.
SECRETARY-DARA ANDERSON

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0209	1/25	2/12		CONCUR AS AMENDED		3/18
WALLIN, NORM			PERFECT LIEN ON VEHICLE ON DATE LIEN NOTICE DELIVERED TO COUNTY TREASURER			
HB0233	2/27				NATURAL RESOURCES	
BARDANOUVE, FRANCIS			PROVIDE FIRST RIGHT TO PURCHASE RAILROAD RIGHT-OF-WAY TO SPECIFIC PERSONS			
HB0241	2/12	3/15		ADVERSE RPT ADOPT		3/20
WHALEN, TIM			DISCLOSURE OF LOSS AND EXPENSE EXPERIENCE BY PROPERTY AND CASUALTY INSURERS			
HB0248	1/31	3/12		CONCUR		3/12
JOHNSON, ROYAL			REVISE LAWS RELATING TO SECURITIES & REGULATING VARIABLE ANNUITY PRODUCTS			
HB0252	2/11	3/07		CONCUR AS AMENDED		3/21
FORRESTER, GARY			ALLOW 45 DAYS TO GIVE NOTICE OF RIGHT TO CLAIM CONSTRUCTION LIEN			
HB0258	2/25	3/05		CONCUR AS AMENDED		3/07
BACHINI, BOB			REQUIRE AUTO WARRANTY WORK TO BE PAID SAME AS RETAIL WORK -- ADMIN PENALTIES			
HB0260	2/27	3/19		CONCUR		3/19
BARNHART, BEVERLY			REQUIRE INSURANCE TO COVER ADOPTED CHILD SAME AS NATURAL CHILDREN OF INSURED			
HB0261	2/27	3/22		CONCUR AS AMENDED		3/26
KILPATRICK, TOM			PROHIBIT PRICE DISCRIMINATION FOR COMMODITIES OF LIKE GRADE AND QUALITY			
HB0279	2/05	3/07		CONCUR AS AMENDED		3/07
SCHYE, TED			PROHIBIT USE OF AUTO TELEPHONE SYS., DEVICES, OR FACSIMILE FOR SPECIFIC USE			
HB0297	2/05	3/12		CONCUR		3/12
SPRING, JR., WILBUR			REVISE LAWS ON SURPLUS LINES INSURANCE			
HB0331	2/08	3/13		CONCUR		3/13
KILPATRICK, TOM			DEPT OF JUSTICE RESTRICT DISCLOSURE OF INFO RELATING TO VEHICLE OWNER			

HOUSE BILL NO. 258

INTRODUCED BY BACHINI, NATHE, STANG, WALLIN, LYNCH, DRISCOLL, HALLIGAN, J. BROWN, THAYER, KASTEN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT COMPENSATION PAID BY MOTOR VEHICLE MANUFACTURERS TO MOTOR VEHICLE DEALERS FOR PARTS AND SERVICES PERFORMED UNDER WARRANTY MUST BE AT THE SAME RATE CHARGED BY THE DEALER FOR RETAIL WORK; PROVIDING ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 61-4-204 AND 61-4-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-204, MCA, is amended to read:

"61-4-204. **Filing agreement -- product liability.** (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be

THIRD READING

performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not affect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. ~~The~~ EXCEPT AS REGARDS HOUSEHOLD APPLIANCES, INCLUDING BUT NOT LIMITED TO RANGES, REFRIGERATORS, AND WATER HEATERS, IN A RECREATIONAL VEHICLE, AS DEFINED IN 61-1-132, AND EXCEPT AS REGARDS A TRUCK RATED AT MORE THAN 10,000 POUNDS GROSS VEHICLE WEIGHT, THE manufacturer must compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the ~~dealer's regular established--retail~~ same rate the dealer charges to its retail customers for ~~similar~~ nonwarranty work of a like kind, based upon retail flat rate labor time guides contained in the most recent volumes of Motors, Mitchell, or Chilton manuals IF THE DEALER USES THE MANUAL AS THE BASIS FOR COMPUTING CHARGES FOR BOTH WARRANTY WORK AND RETAIL

WORK.

(5) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 2. Section 61-4-210, MCA, is amended to read:

"**61-4-210. Penalties -- administrative penalties.** (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three

1 times the pecuniary loss, together with costs including
2 reasonable attorney's fees.
3 (4) In addition to any other penalty provided for in
4 this part, the department may take appropriate enforcement
5 action on its own initiative in accordance with the
6 contested case procedures of Title 2, chapter 4. A person
7 who violates the provisions of this part may be subject to
8 administrative action and a civil penalty not to exceed $500
9 for each violation."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0258, third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

The proposed legislation would require that compensation paid by motor vehicle manufacturers to motor vehicle dealers for parts and services performed under warranty must be at the same rate charged by the dealer for retail work. The bill also provides for additional administrative action and civil penalty for each violation.

ASSUMPTIONS:

1. The fiscal impact is based upon the assumption that the Attorney General would have a significant role in cases against motor vehicle manufacturers under this bill. However, if motor vehicle dealers rely primarily on private attorneys rather than the Attorney General, there may be minimal impact on the Department of Justice caseload.
2. Current law is represented by the executive budget recommendation for the Legal Services Bureau of the Department of Justice. Operating expense increases are calculated on the basis of $7,500 per FTE. Equipment increases are based upon adding a personal computer and office furniture for three persons.
3. The 2.50 FTE increase as a result of this bill include a 0.50 FTE attorney (Grade 19, Step 2), 1.00 investigator (Grade 16, Step 2), and 1.00 FTE clerical (Grade 9, Step 2). Employee benefits are calculated at a rate of 22%.

FISCAL IMPACT:

Department of Justice-Legal Services Bureau

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
FTE	19.50	22.00	2.50	19.50	22.00	2.50
Personal Services	774,000	820,700	76,700	743,000	823,800	80,800
Operating Costs	166,000	184,800	18,800	161,400	180,200	18,800
Equipment	13,000	23,500	10,500	12,700	12,700	0
Total	923,000	1,029,000	106,000	917,100	1,016,700	99,600
Funding:						
General Fund	923,000	1,029,000	106,000	917,100	1,016,700	99,600
General Fund Impact			(106,000)			(99,600)

Rod Sundsted 2-22-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BOB BACHINI, PRIMARY SPONSOR DATE

Fiscal Note for HB0258, third reading

HB 258
THIRD READING

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on March 5, 1991, at 10:00 a.m.

ROLL CALL

Members Present:
J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON HOUSE JOINT RESOLUTION 27

Presentation and Opening Statement by Sponsor:

Representative Bob Bachini, sponsor of the bill, stated that the immigration and naturalization is considering charging border fees crossing into Canada, from Canada into the United States. It would also include Americans going into Canada and coming back. (See Exhibit 1).

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions From Committee Members:

Senator Lynch asked if they do charge the fee, where does the fee go.

Representative Bachini stated that the fee would go to the immigration and naturalization to fund their border station.

Closing by Sponsor:

Representative Bachini closed by saying that he spoke with congressman Pat Williams and brought this issue up to him. He was not aware of congress telling immigration and naturalization to do this. Senator Kennedy will carry house joint resolution 27 if it passes.

HEARING ON HOUSE BILL 258

Presentation and Opening Statement by Sponsor:

Representative Bob Bachini, sponsor of the bill, stated that this is an act requiring that compensation paid by motor vehicle manufacturers to motor vehicle dealers for parts and services performed under warranty must be at the same rate charged by the dealer for retail work; providing administrative penalties; and amending sections 61-4-204 and 61-4-210. The motor vehicle dealers have been captive to the manufacturers in using a manual that they have to abide by. Their manuals do not allow a time for the warranty work. Page three of the bill from lines eleven through twenty five, the auto dealers of Montana are asking that they be allowed to use the three noted manuals that are printed by independents. When they do use one of those manuals they should use the same manual for warranty work and for parts work.

Proponents' Testimony:

Ed Leipheimer, a car dealer from Butte and also the president of the Montana auto dealers association, spoke in favor of the bill (See Exhibit 2).

Gary Rebal, president-elect of the Montana auto dealers association and an auto dealer in Great Falls spoke in favor of the bill (See Exhibit 3).

Don Dahl, a technician for grimes motors, stated that he wants the committee to look at this bill at a technician's point of view as well as a dealers. The waists of most technicians are tied directly to the flat rate system, and there is great discrepancy that exists between warranty time which is established by the manufacturer, and shall be flat rate time. He used a 1988 dodge aries as an example with a labor rate of thirty eight dollars an hour. For a rear brake job, warranty would pay eight tenths which would be thirty dollars and forty cents. Chilton's would pay one point five hours, which would be fifty seven dollars for a forty seven percent difference. For a water pump it would be an hour on warranty compared to one sixth on

chilton.

Larry Tobieson, representing triple A of Montana, stated that they support this measure.

Representative Norm Wallin spoke in favor of the bill as a retired auto dealer. After forty years, he knows the problem, and this bill is a fair bill. The opposition is going to tell you that the books that they print are copied by the chilton's, and it has also been raised that it would take advantage of the retail customers. This is not so. It takes a very experienced mechanic to keep up with the time allowed by chiltons. This bill passed with no opposition in the house.

Steve Gilreath, representing Hjelm's body shop in Helena, stated that he would like to confirm that some of the work they do for the dealers in town are at a much different rate than the factory rates.

Steve Turkiewicz, executive vice president of the Montana auto dealers association, spoke in favor of the bill (See Exhibit 4).

Opponents' Testimony:

Earl Quist, representing Toyota motor sales USA, inc. stated that Toyota's single concern with this measure is the specific statement requiring use of three different books. The bill should be amended to a provide reasonableness standard to warranty rates. He also proposed an amendment to add a clause on line one, page four which continues the sentence now ending "work". as follows: "provided that those rates are reasonable".

Tom Valley, representing the motor vehicle manufacturing association, stated that Earl Quist echoed their sediments. The use of the none factory manuals is something that concerns them very deeply, and the issue of reasonableness is also one that concerns them in terms of the pricing structures. The dealer would have the ability to create the pricing structures himself. Although they still oppose this legislation because of the use of retail rates for parts, and the use of the manuals, he thinks that an amendment on page four, line one, after "work" state "provided that those rates are reasonable".

Tom Schwertfeger, regional government affairs manager for ford motor company, spoke in opposition of the bill (See Exhibit 5).

Questions From Committee Members:

Senator Kennedy asked if the technicians find that the time recommended in the manufacturers manuals too low.

Don Dahl replied that probably eighty to ninety percent of the time the time that they recommend is too low.

Senator Kennedy asked if a job takes an hour, and the manufacturers warranty says it should take an hour and a half do the dealers bill the manufacturer for the hour or for the hour and a half.

Gary Rebal stated that if the job takes an hour or five

hours for a one point five hour job, they would bill one point five hours.

Senator Lynch stated that he was confused on how the mechanics make money. A mechanic, for example, makes eight dollars a day, but they can make more than that if they do a faster job.

Gary Rebal stated that the mechanic is punched in for eight hours, and he does twelve hours as a flat rate job. Instead of getting paid eighty dollars in a day, he would get paid one hundred dollars. If he punched in for six hours, he would be paid sixty dollars.

Don Dahl stated that in Helena, they get paid a flat ten dollars and twenty five cents. They have a twelve dollar and fifty cent bonus system if they make flat rate time. They are guaranteed eighty dollars a week.

Senator Noble asked if the times in each of the manuals vary.

Gary Rebal stated that the times do vary with the manuals.

Senator Noble stated that the bill excludes truck dealers.

Representive Bachini stated that they excluded trucks at the request of navastar.

Tom Valley stated that two of the members of his association are navastar. Their contracts are very much like the automobile contracts, and do prescribe the warranty reimbursement for parts and labor. The reason that navastar asked to be pulled from this legislation is that a significant amount is done where they sell a large quantity of a vehicles to a trucking firm. They also price their parts at a fleet price depending on the number of vehicles that you may or may not sell.

Senator Lynch stated that he has never seen a publishers name be mentioned in a law as this bill would do. Is this the only state in the union that would have these three names be mentioned in the law.

Representative Bachini stated there are other states that are looking at this type of legislation. They could also include later on another manual. These are manuals used by insurance companies nationwide.

Senator Lynch asked why they would exclude the manufacturers books.

Representative Bachini stated that the manufacturer books are not excluded.

Steve Turkiewicz stated that the dealer can choose to use the flat rate or he can use the retail because of the amendment that general motors proposed.

Ed Leipheimer stated that if the bill doesn't read that way, then the manufacturers will come in and say that theirs is a nationally recognized flat rate manual, and you stay on the manual that you are on.

Senator Williams asked if there are other national publishers other than the three mentioned.

Gary Rebal stated that he does not know of any other books on the market right now.

Closing by Sponsor:

Representative Bachini closed by saying that there are some reasons why the bill should pass as is, with no amendments. This bill is not premature, this bill is actually twenty five to thirty years late. Because of the extended warranty they have on the cars, as a car gets older it is harder to work on. Auto dealers are being asked to take care of warranty work from a car bought in Idaho brought back into Montana. The Montana auto dealers, and the auto dealers nationwide have been captive to the manufacturers too long. This is a pro-consumer bill, because if the auto dealer is not compensated properly, then the consumer will pick up the difference on the warranty work.

HEARING ON HOUSE BILL 683

Presentation and Opening Statement by Sponsor:

Representative Dick Simpkins, sponsor of the bill, stated that this bill is a consumer bill that standardizes some procedures concerning the use of repair parts. Repair parts that are talked about are the external type. The situation that exists today is you have a manufactured part put out by general motors, and then you have duplicate parts put out by Taiwan, China, and some manufacturers in the United States. For a period of time, insurance companies were getting into the habit of specifying using cheaper parts without identification of where the parts are manufactured. This bill does one thing, and it doesn't prevent the use of other parts made overseas, but it does require disclosure that the using consumer have to be made aware that the parts that are being used in their car are used parts.

Proponents' Testimony:

Steve Browning, representing state farm insurance companies, inc., stated that this bill will help reduce the cost of auto parts, and will reduce upwards pressure on auto insurance premiums. It is a good bill, with one small problem. State farm would like to see the enforcement section (new section 5) amended to have the enforcement coordinated with the Montana insurance commissioner. State farm is accustomed to being regulated by the Montana insurance commissioner's office, and not by the Montana department of commerce. State farm believes that it will be less expensive to its policy holders if the enforcement can be coordinated with the Montana insurance commissioner.

Jacqueline Terrell, representing the American insurance association, stated that escalating automobile repair costs, and high auto insurance premiums are being aggressively attacked by insurance companies in many ways, including the use of quality automobile repair parts manufactured by companies that are in competition with the original manufacturer. The original manufacturers primarily represent the major auto makers. The use of the less expensive, quality after market spare parts, whether

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE 3/5/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	Y		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. HB 258 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: To Amend

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/7/91 Bill No. HB 258 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE		X
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON
Secretary

J.D. LYNCH
Chairman

Motion: Be Concurred In As Amended

HOUSE BILL 258: RETAIL LABOR AND PARTS WARRANTY

Ed Lelpheimer, President, MADA
March 5, 1991

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 3/5/91
BILL NO. HB 258

Our dealers support this bill for these primary reasons:

FIRST: As dealers, we find ourselves in the position of having to subsidize the manufacturers' warranties. Years ago the Montana legislature enacted the Montana Franchise Law to protect the business people of Montana. As part of that law, motor vehicle manufacturers were required to reimburse their dealers at the dealer's prevailing retail labor rate. Unfortunately, the law did not address the other two items which make up the cost of a warranty repair. Those two items are the time allowed to perform the work (referred to as Flat Rate Time) and the price of the parts required to complete the repair. The labor times allowed by the typical factory flat rate guide are about 30 percent less than the prevailing nationally-recognized retail flat rate manuals. The reimbursement for parts used in a warranty repair is typically 23 percent gross profit compared to a normal retail selling price, as suggested by the manufacturer, of 40 percent gross profit. Therefore, the dealer receives approximately half as much gross profit on parts in a warranty repair before considering any overhead expense.

SECOND: We support this bill because we are forced to ask our technicians and service and parts employees to also subsidize the factories' warranties. Technicians are paid based upon Flat Rate Time and, therefore, receive about 30 percent less while doing warranty repair work as compared to normal customer retail work. This is not fair to our employees!

THIRD: We support this bill for reasons related to our consumers. With the manufacturers required to pay retail rates and the patently unfair labor times and parts reimbursement, there is a constant upward push on retail rates which are ultimately paid by the consumer. This also has the tendency to push consumers away from the dealerships for regular service work. This situation is very similar to the way insufficient Medicare payments by the federal government tends to push up health care costs for the average person.

We are also concerned about the level of service our consumers can expect. Consider for a minute a consumer's vehicle with a serious paint defect. Many dealers do not have

body and paint shops and must therefore send this type of work out to the independent body shops. Those shops base their estimates and repair costs on the nationally-recognized body repair manuals. This is true for retail consumer work and insurance work, and is, of course, what the dealership will have to pay to repair the consumer's vehicle. The dealer, however, will be reimbursed based upon the factory Flat Rate Time. In many cases, this will be 40-50 percent less than that charged by the body shop.

What level of service can that consumer expect, especially if the vehicle in question was not purchased from the dealer doing the repair?

Dealers and manufacturers alike are extremely concerned with customer satisfaction. But the question remains as to who is going to pay!

Obviously this situation has existed for a long time, so why do we come to you now? Primarily two reasons.

FIRST: A smaller pie----dealers across this country are struggling to survive. Nationally, net profit margins are just over one percent for the average new car dealership. In Montana I'm certain it is below that level. As more and more dealerships close their doors, there is an obvious negative impact on the state's economy and a hardship imposed upon our consumers and employees alike.

SECOND: Probably more important--regarding why we are here now--is the length of the warranties we are subsidizing. When warranties only lasted one year, and with the reliability of today's vehicles, our subvention was tolerable at best. But now, with warranties running as long as seven years, our shops are fast becoming nothing but warranty repair centers. We are doing the same work at a tremendous discount to the manufacturer that would have formerly been retail work to our technicians.

If the manufacturers want to play warranty wars, let them bare the cost of their marketing decisions.

I urge you to support this bill.

Ex 2 p2
3-5-91

Rebal Auto Center

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 3/5/91
BILL NO. HB 258

March 5, 1991

I'm Gary Rebal President-elect of the Montana Auto Dealers Association and auto dealer in Great Falls that sells both domestic and import cars and trucks.HB-258 is necessary to the Montana new car and truck dealers because it will allow us to charge the manufactors fair flat rate hours for the warranty work we're required to perform.

Let me take a moment to expbain flat rate. Each job a mechanic performs has a time allocation assigned called flat rate. The technician is paid by multiplying his hourly pay rate times the flat rate allocated to the job. The manufactors flat rate is less than other nationally published books for most jobs.

This bill is fair to the mechainics where pay checks are determined by the flat rate manual under which they are working. The manufactors flat rate manual gives less time for the same job then other nationally recognized flat rate manuals, so the mechanic makes less money doing a warranty job then if he wasn't. For the work that mechanics perform on internal work- that is our ~~wn~~ own used cars- they are paid out of the national books- not the manufactors manual. I do this out of fairness to the worker. Also retail work is charged out of national manuals.

This bill is fair to the consumer because the low amounts paid by the factory puts upward presssure on our retail labor rate. The dealer is caught in the middle, we want to keep our labor rates as low as possible to keep our mechanics busy, but we do have to pay the bills.

4900 10th Avenue South • P.O. Box 2466 • Great Falls, Montana 59403
Telephone (406) 727-1991 • Fax (406) 453-1034

While the manufactors will oppose this bill, I believe long term it will have little effect on them, as it will reduce the upward pressure on labor rates. Since in the long term the labor rates will increase at a much smaller rate, the manufactors cost will be relatively the same in the long run. The manufactors are opposing this bill because they've always done it their way and don't want to change. It really isn't a dollor issue with them, because they've told me just raise my labor rate as high as it needs to be and they'll approve it, as long as I use their books. In the real work you can't raise your labor rate to high because the customer won't pay it, and we'll lose business.

This bill is fair to the worker, the consumer, the auto dealer and will ultimately be fair to the factory.

Thank You.

4900 10th Avenue South • P.O. Box 2466 • Great Falls, Montana 59403
Telephone (406) 727-1991 • Fax (406) 453-1034

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 3/5/91
BILL NO. HB 258

TESTIOMONY FOR HOUSE BILL 258
STEVE TURKIEWICZ
MONTANA AUTOMOBILE DEALER ASSOCIATION
MARCH 5, 1991

In the past twenty years, the issue of warranty reimbursement has been before various state legislatures in various forms, including ours. The intent of the legislation was to reimburse the dealers at their prices for meeting the warranty obligations given by the manufacturers. In past years legislation has been passed that was thought to adequately address the issue.

Our current law, states, "The manufacturer must compensate an authorized dealer who performs work to rectify the manufacturer's product or warranty defect or delivery and preparation obligations at the dealer's regular established retail rate for similar work." We thought this language would reduce the dealer's subsidy for the factory. Since the bill was passed, the manufacturers have been pretty good in paying the "retail rate".

But every service job in a dealership is made up of three components: the rate - the cost per hour the shop charges; the flat rate - the time needed to complete the job; and thirdly the price of the parts replaced. But, even with our law, the manufacturers are not paying the full price of warranty work because they require the dealers to use the manufacturer's own flat rate manual to determine the time required to complete a job and the manufacturer's have their own schedule for reimbursement for parts. Part, that I might add, the manufacturer sells to the dealer at a profit and the dealer must use in warranty repairs.

Other legislatures have passed bills reflecting the necessary language to bring dealers reasonable compensation for their warranty work for the manufacturers. Still dealers are losing money on warranty work. One study indicates dealers lost $19.17 on the parts and labor on the average warranty job and made $2.95 on the parts and labor on the average retail job.

West Virginia now requires no manufacturer, " pay its dealers an amount less than that charged by the dealer to retail customers of the dealer for nonwarranty and nonrecall work of the like kind: and in no event shall any manufacturer compensate for warranty and retail work based on a flat rate figure that is less than what the dealer charges for retail work."

Texas law now states: In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged for nonwarranty work of like kind."

New Jersey law states: "The motor vehicle franchisor shall reimburse each motor vehicle franchisee for such services as are rendered and for such parts as are supplied, in an amount equal to the prevailing price charged by such motor vehicle franchisee for such services and parts in circumstances where such services are rendered or such parts supplied other than pursuant to warranty". The law goes on to state the retail price can't be unreasonable.

Five other states have adopted similar language to protect the dealers. And, at least seven current legislatures are considering bills to address the short fall in some facet of warranty reimbursement.

As part of the continued evolution of strengthening the dealers ability to recoup warranty work costs, our proposal specifies the manuals for flat rate time the dealers will be using in the repair equation that is their retail time. This clearly specifies to the dealer and the manufacturer what "retail" is and how it is to be derived.

The manuals specified in the proposal are Chilton's, Motors or Mitchell. These manuals are nationally recognized as the flat rate manuals used for retail labor times throughout the nation. These manuals determine their times by a program of continually surveying independent or retail automotive repair outlets. Their figures are accepted by insurance companies and independent extended warranty companies on a nationwide basis.

In various comparisons, we have found the differences between factory times and the independent manuals to range as low as 0% to 167% depending on the repair operation. But, by and large the average difference is in the 30-40% range. The times generally reflect the needs of an average trained auto mechanic using factory recommended tools and factory recommended repair procedures.

The times include allowances for vehicle repair preparation, normal clean-up associated with repair, verification of repair, mechanics personal needs, preventative measures and any other service that would normally accompany an individual operation.

Times don't include training or excessive reference time on unfamiliar operations. Nor do they include allowance for diagnosis, machine operations, booking the job or any special courtesy services that may be performed.

The labor times are determined by the manual's editors with extensive mechanical backgrounds in the automotive industry. Times are based on field research surveys, data supplied by the vehicle manufacturers and actual field studies.

Given the widespread acceptance of the specified manuals, they offer a credible source for determining the retail flat rate to be used by Montana's dealers in performing their warranty obligations. After all the point here is that it is not reasonable for the manufacturer to ask us to lose money fulfilling the promise made by them to Montana's auto consumer.

We ask your support and a "do pass" recommendation on House Bill 258.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3/5/91
BILL NO. HB 258

Ford Motor Company
Regional Governmental Relations Office

1560 Broadway — Suite 890
Denver, Colorado 80202
Telephone: 303/860-8888

STATEMENT OF FORD MOTOR COMPANY

Montana House Bill 258

Ford Motor Company respectfully submits the following comments with respect to Montana House Bill 258. Ford is opposed to the changes the bill would make with respect to a manufacturer's obligations to dealers for warranty work performed under our dealer franchise agreement. Such legislation is premature, unnecessary, and will likely result in higher prices to consumers.

The National Automobile Dealers Association (NADA) is currently conducting a national study of dealer warranty reimbursement, and state legislation on this subject is premature. A uniform national warranty program, including dealer reimbursement, which treats all dealers and consumers fairly, is the most reasonable and equitable. Any departure from a national program would be difficult and costly to administer. Manufacturers will not likely be able to absorb the increased cost, and such legislation could result in higher prices to consumers. The NADA is presently conducting a national study with groups of new vehicle dealers. Ford and other manufactureres have agreed to meet with NADA to review the results of that study, and expect that to be accomplished within the next thirty days. We would respectfully request that any legislative action on warranty reimbursement should be postponed to give the industry a chance to review the study results, meet to discuss them and to avoid a patchwork approach to the issue. Vehicle margin = less costly.

Changes to the warranty reimbursement law are unnecessary because the dealers' parts and service business is presently profitable and the trend in gross margins continues to improve. Ford dealer profitability on parts and service business, including warranty, has increased over the past five years by 45% and parts and service gross margins (sales, repairs, parts cost and technician wages) have increased 54% from 1985 through 1989. The average dealer gross margin for warranty repairs (on a percentage of sales basis) has improved from 39.8% in 1985 to 40.6% in 1989. Warranty gross margins have been higher than the average parts and service business. Any departure from our national warranty reimbursement program would result in higher costs that will have to be recovered through pricing action.

Ford's current level of warranty compensation is uniform, fair, and reasonable. Dealers are compensated for parts at cost plus a 30% markup and at their stated retail labor rate provided it is reasonable and competitive in their market. The increased costs resulting from proposed legislation would have to be recovered through pricing actions. Compensation on an individual dealer basis would result in a substantial administrative expense, resulting in a significant price increase. Dealers in your state may then find themselves in a non-competitive situation with respect to dealers outside your state. Ultimately, consumers in your state would bear the burden of this increased cost while receiving no additional benefit.

Ford reimburses its dealers at the individual dealer's hourly retail labor rate provided it is fair, reasonable, and competitive. There are two elements to the amount charged for labor for a repair, whether it is a warranty repair or customer pay -- the hourly labor rate and the amount of time reasonably required to perform the repair. Ford reimburses its dealers at the individual dealer's hourly retail labor rate provided it is fair, reasonable, and competitive. Over 97% of Ford's warranty labor payments are at the dealer's stated retail labor rate. Time standards for warranty labor operations are set up using the Ford Labor Time Standards Manual. Ford labor time standards are developed by timing technician operations using actual vehicles in a dealership environment. A contingency allowance of 5% is added to the actual time for technician personal needs; then, an additional 20% is added for vehicle age, condition, and variations in technician proficiency.

Mitchell

Other time standard manuals published by independents, such as Chilton and Motors, are used by many dealers for non-warranty retail repair work. These independents seldom, if ever, time any operations. Generally, they use surveys of independent and dealer service shops to establish labor time standards. From a review of their manuals, it appears that they take manufacturers' time standards and apply an increase factor. Independent publishers have justified such higher allowances on the grounds that their manuals are primarily intended for independent repair shops, which are at a disadvantage to new car dealers in the areas of factory shop manuals, service bulletins, technical training, special tools and equipment and product specialization.

The proposed legislation would require a dealer to use independent manuals for warranty repairs. There is no conceivable justification for doing so other than to enrich the dealer at the expense of the consumer.

Ford would urge that the proposed legislation not be enacted.

— Some standard of "reasonableness"?

Respectfully submitted,

Tom Schwertfeger

Thomas Schwertfeger
Regional Manager
State Government Relations

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 5th day of March, 1991.

Name: Earl Guist

Address: Toyota Motor Sales, USA, Inc.
1850 M ST, N.W, SUITE 600, WASHINGTON, DC 20036

Telephone Number: 202-775-1700

Representing whom?

TOYOTA

Appearing on which proposal?

HB 258

Do you: Support?____ Amend? X Oppose?____

Comments:

Bill should be amended to provide reasonableness standard to warranty rates

Add clause on line 1, page 1 which continues the sentence and now ending "WORK." as follows: "provided that these rates are reasonable."

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 5 day of March, 1991.

Name: Tom Schwertfeger

Address: 1560 Broadway, Suite 890
Denver, CO 80202

Telephone Number: 303-860-8888

Representing whom?

Ford

Appearing on which proposal?

H-258

Do you: Support?____ Amend? ✓ Oppose? ✓

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

COMMITTEE ON Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Gene Phillips	Nat. Assoc. Ind. Ins. Alliance Amer. Ins.	HB 683	X	
Jacqueline N. Terrell	Am. Ins. Assoc	HB 683	X	
[illegible]	Montana Auto Dealers Assn	HB 258	X	
Steve Turkiewicz	Mt. Auto Dealers Assn	HB 258 HB 683	X	
Earl Quist	Toyota	HB 258 HB 683	X	X
Tom Valley	MVMA	258 683		X
[illegible]	[illegible]	258	✓	
Steve Giheath	Hjelvis Body Shop	258	✓	
Tom Schwertfeger	Ford Motor Co.	H-258 H-683	X	X
Steve Browning	State Farm Ins. Cos.	HB 683	✓	

(Please leave prepared statement with Secretary)

SENATE STANDING COMMITTEE REPORT

March 7, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 258 (third reading copy -- blue), respectfully report that House Bill No. 258 be amended and as so amended be concurred in:

1. Page 3, line 20.
Following: "rate"
Insert: "and time"

2. Page 3, lines 22 through page 4, line 1.
Strike: "retail" on line 22 through "work" on line 1
Insert: "a published, nationally recognized, retail flat rate labor time guide manual"

Signed: _____
John "J.D." Lynch, Chairman

3-7-91
Amd. Coord.

SB 3-7 3:40
Sec. of Senate

HB 258

SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 12, 1991 3:08 pm

Mr. Chairman: I move to amend House Bill No. 258 (reference copy -- salmon) as follows:

1. Page 4, line 2.
Following: "MANUAL"
Insert: ", if the dealer uses the manual as the basis for computing charges for both warranty and retail work"

ADOPT

REJECT

Signed: J. D. Lynch
Senator Lynch

JH 3-13-91
Amd. Coord.

SB 3-13 9:55
Sec. of Senate

SENATE
HB 258

HOUSE BILL NO. 258

INTRODUCED BY BACHINI, NATHE, STANG, WALLIN, LYNCH, DRISCOLL, HALLIGAN, J. BROWN, THAYER, KASTEN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT COMPENSATION PAID BY MOTOR VEHICLE MANUFACTURERS TO MOTOR VEHICLE DEALERS FOR PARTS AND SERVICES PERFORMED UNDER WARRANTY MUST BE AT THE SAME RATE CHARGED BY THE DEALER FOR RETAIL WORK; PROVIDING ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 61-4-204 AND 61-4-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-204, MCA, is amended to read:

"**61-4-204. Filing agreement -- product liability.** (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be

performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not affect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. ~~The~~ EXCEPT AS REGARDS HOUSEHOLD APPLIANCES, INCLUDING BUT NOT LIMITED TO RANGES, REFRIGERATORS, AND WATER HEATERS, IN A RECREATIONAL VEHICLE, AS DEFINED IN 61-1-132, AND EXCEPT AS REGARDS A TRUCK RATED AT MORE THAN 10,000 POUNDS GROSS VEHICLE WEIGHT, THE manufacturer must compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the ~~dealer's regular established retail~~ same rate AND TIME the dealer charges to its retail customers for ~~similar~~ nonwarranty work of a like kind, based upon ~~retail flat rate labor time guides contained in the most recent volumes of Motors, Mitchell, or Chilton manuals IF THE DEALER USES THE MANUAL AS THE BASIS FOR COMPUTING CHARGES FOR BOTH WARRANTY WORK AND RETAIL WORK~~

A PUBLISHED, NATIONALLY RECOGNIZED, RETAIL FLAT RATE LABOR TIME GUIDE MANUAL.

(5) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 2. Section 61-4-210, MCA, is amended to read:

"**61-4-210. Penalties -- administrative penalties.** (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in

1 a court of competent jurisdiction in amount equal to three
2 times the pecuniary loss, together with costs including
3 reasonable attorney's fees.
4 (4) In addition to any other penalty provided for in
5 this part, the department may take appropriate enforcement
6 action on its own initiative in accordance with the
7 contested case procedures of Title 2, chapter 4. A person
8 who violates the provisions of this part may be subject to
9 administrative action and a civil penalty not to exceed $500
10 for each violation."

-End-

HOUSE BILL NO. 258

INTRODUCED BY BACHINI, NATHE, STANG, WALLIN, LYNCH, DRISCOLL, HALLIGAN, J. BROWN, THAYER, KASTEN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT COMPENSATION PAID BY MOTOR VEHICLE MANUFACTURERS TO MOTOR VEHICLE DEALERS FOR PARTS AND SERVICES PERFORMED UNDER WARRANTY MUST BE AT THE SAME RATE CHARGED BY THE DEALER FOR RETAIL WORK; PROVIDING ADMINISTRATIVE PENALTIES; AND AMENDING SECTIONS 61-4-204 AND 61-4-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement -- product liability. (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be

performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not affect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. ~~The~~ EXCEPT AS REGARDS HOUSEHOLD APPLIANCES, INCLUDING BUT NOT LIMITED TO RANGES, REFRIGERATORS, AND WATER HEATERS, IN A RECREATIONAL VEHICLE, AS DEFINED IN 61-1-132, AND EXCEPT AS REGARDS A TRUCK RATED AT MORE THAN 10,000 POUNDS GROSS VEHICLE WEIGHT, THE manufacturer must compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the ~~dealer's regular established--retail~~ same rate AND TIME the dealer charges to its retail customers for ~~similar~~ nonwarranty work of a like kind, based upon ~~retail--flat--rate--labor--time--guides contained in the most recent volumes of Motors, Mitchell, or Chilton manuals IF THE DEALER USES THE MANUAL AS--THE--BASIS FOR COMPUTING CHARGES FOR BOTH WARRANTY WORK AND RETAIL WORK~~

A PUBLISHED, NATIONALLY RECOGNIZED, RETAIL FLAT RATE LABOR TIME GUIDE MANUAL IF THE DEALER USES THE MANUAL AS THE BASIS FOR COMPUTING CHARGES FOR BOTH WARRANTY AND RETAIL WORK.

(5) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 2. Section 61-4-210, MCA, is amended to read:

"**61-4-210. Penalties** -- administrative penalties. (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative

1 or agent thereof, the dealer may recover damages therefor in
2 a court of competent jurisdiction in amount equal to three
3 times the pecuniary loss, together with costs including
4 reasonable attorney's fees.
5 (4) In addition to any other penalty provided for in
6 this part, the department may take appropriate enforcement
7 action on its own initiative in accordance with the
8 contested case procedures of Title 2, chapter 4. A person
9 who violates the provisions of this part may be subject to
10 administrative action and a civil penalty not to exceed $500
11 for each violation."

-End-